

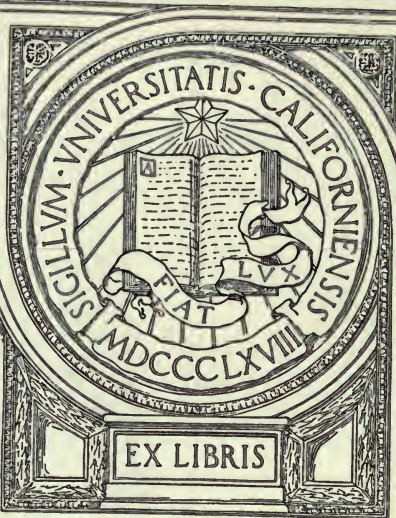
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DAIRY AND FOOD LAWS

OF THE

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STATE OF MICHIGAN

Michigan Laws, Statutes
WITH

SUPREME COURT DECISIONS

RELATING THERETO

SEPTEMBER 1, 1915

COMPILED AT THE OFFICE OF THE
DAIRY AND FOOD DEPARTMENT

LANSING, MICHIGAN
WYNKOOP HALLENBECK CRAWFORD CO., STATE PRINTERS
1915

B. F. Wholesale Dairy Products Exchange

Michigan, THE
" Laws

DAIRY AND FOOD LAWS

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STATE OF MICHIGAN

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LAWS OF MICHIGAN

RELATIVE TO INSPECTION AND ADULTERATION OF FOODS AND DRUGS

POWERS AND DUTIES OF THE COMMISSIONER

AN ACT to provide for the appointment of a Dairy and Food Commissioner, and to define his powers and duties and fix his compensation.

(Act No. 211, Public Acts, 1893.)

1. (C. L., 4973) Section 1. *The People of the State of Michigan enact*, That within thirty days after this act shall take effect, the Governor by and with the consent of the Senate, shall appoint a suitable person to be Dairy and Food Commissioner, which office is hereby created, and which commissioner so appointed shall hold his office until the first day of January, one thousand eight hundred and ninety-five and until his successor is appointed and qualified. At the next regular session of the legislature and every two years thereafter, the Governor, by and with the advice and consent of the Senate, shall appoint a Dairy and Food Commissioner, who shall hold his office for the term of two years from the first day of January in the year of his appointment and until his successor is appointed and qualified.

2. (C. L., 4974) Sec. 2. The governor shall have power to remove such commissioner at any time in his discretion; but the reasons for such removal shall be laid before the Senate at the next regular or special session of the legislature thereafter, and in case of a vacancy in the office of commissioner from any cause, the Governor may appoint another person to fill the same.

S. F. DAIRY PROD. EXCH '38

3. (C. L., 4975) Sec. 3. Before entering upon the duties of his office, the person so appointed shall make, subscribe, and file in the office of the Secretary of State, an oath of office in the form prescribed by section one of article eighteen of the constitution of this State, and shall enter into bonds with the people of the State of Michigan in the sum of ten thousand dollars, with sureties to be approved by the Governor, conditioned for the faithful performance of his duties.

4. (C. L., 4976) Sec. 4. Said commissioner shall receive an annual salary of two thousand dollars. The said commissioner is hereby authorized and empowered, by and with the advice and consent of the governor, to appoint a deputy commissioner. The salary of the deputy commissioner shall be fifteen hundred dollars per annum. The said commissioner may also appoint eight regular inspectors, who shall receive an annual salary not to exceed one thousand dollars per year, and such other special inspectors as the proper performance of the duties of the office may require, which special inspectors shall be paid not to exceed three dollars per day for the time actually employed: Provided, That the whole sum paid to such special inspectors shall not exceed the income to said department derived from registration fees provided by law. The persons so appointed shall have power to administer oaths in all matters relative to the dairy and food laws and shall take and subscribe the constitutional oath of office and file the same in the office of the secretary of state; and they shall hold office during the pleasure of the commissioner. The inspectors shall have the same right of access to the places to be inspected as the said commissioner or his deputy. The commissioner shall appoint such clerks as he may deem necessary for the transaction of the business of his office. The salaries and expenses authorized by this section shall be for the unexpired part of the fiscal year ending June thirty, nineteen hundred five, and each fiscal year thereafter. Said salaries are to be paid monthly on the warrant of the auditor general. The actual and neces-

sary expenses of the commissioner, deputy and inspectors, in the performance of their official duties, shall be audited by the state board of auditors and paid upon the warrant of the auditor general. Such compensation and expenses shall be certified, audited and paid in the same manner as salaries and expenses paid similar officers. The deputy commissioner and regular inspectors shall enter into bonds with the people of the state of Michigan in the sum of one thousand dollars each, with sureties to be approved by the commissioner, conditioned for the faithful performance of their respective duties. The board of state auditors shall provide office room, and the necessary furniture and fixtures and the necessary stationery, supplies and printing for the conducting of the business of said commissioner, on his application to said board therefor. Said office shall be and remain in the city of Lansing.

[Am. by Act No. 245, P. A. 1895. Am. by Act No. 154, P. A. 1897. Am. by Act No 186, P. A. 1901. Am. by Act No. 230, P. A. 1903. Am. by Act No. 12, P. A. 1905. Am. by Act No. 18, P. A. 1913.]

5. (C. L., 4977) Sec. 5. The commissioner, by and with the consent of the Governor, shall appoint a suitable and competent person as State Analyst, who shall be a practical analytical chemist. The commissioner, in like manner, may appoint an assistant chemist. Before entering upon the duties of their offices, the analyst and assistant chemist shall take, subscribe and file in the office of the Secretary of State the constitutional oath of office. Their term of office shall continue during the pleasure of the commissioner. The Board of State Auditors shall provide a room in connection with the Dairy and Food Commissioner for the laboratory of the State Analyst and his assistant, and the necessary furniture and fixtures therefor. In case of the absence or inability of the State analyst or his assistant to perform his duty, the commissioner may appoint some competent person to perform the same temporarily, which person shall take,

subscribe and file the constitutional oath of office. The salaries and expenses authorized by this section shall be for the unexpired part of the fiscal year ending June thirty, nineteen hundred five, and each fiscal year thereafter, said salaries to be payable monthly on the warrant of the Auditor General. The salary of the chemist shall be not to exceed two thousand dollars; the salary of the assistant chemist shall be not to exceed twelve hundred dollars. The actual and necessary expenses of the chemist and the assistant chemist, in the performance of their official duties, shall be audited by the Board of State Auditors, and paid upon the warrant of the Auditor General. Such an amount as is found to be necessary in the proper performance of the work of the analyst may be expended for chemical supplies. Such compensations, expenses and supplies shall be certified, audited and paid in the same manner as the salaries, expenses and supplies of similar officers.

[Am. by Act No. 245, P. A. 1895. Am. by Act No. 154, P. A. 1897. Am. by Act No. 186, P. A. 1901. Am by Act No. 230, P. A. 1903. Am. by Act No. 12, P. A. 1905.]

6. (C. L., 4978) Sec. 6. It shall be the duty of the Dairy and Food Commissioner to carefully inquire into the dairy and food and drink products and the several articles which are foods or drinks, or the necessary constituents of foods or drink, which are manufactured or sold or exposed or offered for sale in this State, and he may, in a lawful manner, procure samples of the same and direct the State Analyst to make due and careful examination of the same, and report to the commissioner the result of the analysis of all and any of such food and drink products or dairy products as are adulterated, impure or unwholesome in contravention of the laws of this State; and it shall be the duty of the commissioner to make a complaint against the manufacturer or vendor thereof in the proper county and furnish all evidence thereof, to obtain a conviction of the offense charged. The Dairy and Food Commissioner, or his deputy, or any

person appointed by him for that purpose may make complaint and cause proceedings to be commenced against any person for the enforcement of any of the laws relative to adulterated, impure or unwholesome food or drink, and in such case he shall not be obliged to furnish security for costs and shall have power, in the performance of his duties, to enter into any creamery, factory, store, salesroom, drug store, or laboratory, or place where he has reason to believe food or drink is made, stored, sold or offered for sale and open any cask, tub, jar, bottle or package containing, or supposed to contain, any article of food or drink and examine or cause to be examined the contents thereof, and take therefrom samples for analysis. The person making such inspection shall take such sample of such article or product in the presence of at least one witness, and he shall in the presence of said witness, mark or seal such sample and shall tender at the time of taking to the manufacturer or vendor of such product, or to the person having the custody of the same, the value thereof, and a statement in writing for the taking of such sample. Whenever it is determined by the Dairy and Food Commissioner, his deputy or inspectors, that filthy, or unsanitary conditions exist or are permitted to exist in the operation of any bakery, confectionery, or ice cream plant, or in any place where any food or drink products are manufactured, stored, deposited or sold for any purpose whatever, the proprietor or proprietors, owner or owners, of such bakery, confectionery or ice cream plant, or any person or persons, owning or operating any plant where any food or drink products are manufactured, stored, deposited or sold, shall be first notified and warned by the commissioner, his deputy or inspectors to place such bakery, confectionery or ice cream plant, or any place where any food or drink products are manufactured, stored, deposited or sold in a sanitary condition within a reasonable length of time; and any person or persons owning and operating any bakery, confectionery or ice cream plant or any place where any food or drink products are manufactured,

stored, deposited or sold, failing to obey such notice and warning, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than three hundred dollars and costs of prosecution, or imprisonment in the county jail not to exceed ninety days, or until such fine and costs are paid, or both fine and imprisonment at the discretion of the court.

[Am. by Act No. 245, P. A. 1895. Am. by Act No. 154, P. A. 1897. Am. by Act No. 268, P. A. 1899. Am. by Act No. 12, P. A. 1905.]

7. (C. L., 4979) Sec. 7. The commissioner, his deputy or any person by said commissioner duly appointed for that purpose, is authorized at all times to seize and take possession of any and all food and dairy products, substitutes therefor, or imitation thereof kept for sale, exposed for sale or held in possession or under the control of any person which in the opinion of the said commissioner or his deputy or such person by him duly appointed, shall be contrary to the provisions of this act or other laws which now exist or which may be hereafter enacted.

First, The person so making such seizure as aforesaid, shall take from such goods as seized a sample for the purpose of analysis and shall cause the remainder thereof to be boxed and sealed and shall leave the same in the possession of the person from whom they were seized, subject to such disposition as shall hereafter be made thereof according to the provisions of this act.

Second, The person so making such seizure, shall forward the sample so taken to the State Analyst for analysis, who shall make an analysis of the same and shall certify the results of such analysis, which certificate shall be prima facie evidence of the fact or facts therein certified to in any court where the same may be offered in evidence.

Third, If upon such analysis it shall appear that said food or dairy products are adulterated, substitutes or im-

itations within the meaning of this act, said commissioner, or his deputy or any person by him duly authorized may make complaint before any justice of the peace or police justice having jurisdiction in the city, village or township where such goods were seized, and thereupon said justice of the peace shall issue his summons to the person from whom said goods were seized, directing him to appear not less than six nor more than twelve days from the date of the issuing of said summons and show cause why said goods should not be condemned and disposed of. If the said person from whom said goods were seized cannot be found said summons shall be served upon the person then in possession of the goods. The said summons shall be served at least six days before the time of appearance mentioned therein. If the person from whom said goods were seized cannot be found, and no one can be found in possession of said goods, and the defendants shall not appear on the return day, then said justice of the peace shall proceed in said cause in the same manner provided by law where a writ of attachment is returned not personally served upon any of the defendants and none of the defendants shall appear upon the return day.

Fourth, Unless cause to the contrary thereof is shown, or if said goods shall be found upon trial to be in violation of any of the provisions of this act or other laws which now exist or which may be hereafter enacted, it shall be the duty of said justice of the peace or police justice to render judgment that said seized property be forfeited to the State of Michigan, and that the said goods be destroyed or sold by the said commissioner for any purpose other than to be used for food. The mode of procedure before said justice shall be the same, as near as may be as in civil proceedings before justices of the peace. Either parties may appeal to the circuit court as appeals are taken from justices' courts, but it shall not be necessary for the people to give any appeal bond.

Fifth, The proceeds arising from any such sale shall be paid into the State treasury and credited to the general

fund: Provided, That if the owner or party claiming the property or goods so declared forfeited can produce and prove a written guarantee of purity, signed by the wholesaler, jobber, manufacturer or other party from whom said articles were purchased, then the proceeds of the sale of such articles, over and above the cost of seizure, forfeiture, and sale, shall be paid over to such owner or claimant to reimburse him, to the extent of such surplus, for his actual loss resulting from such seizure and forfeiture, as shown by the invoice.

Sixth, It shall be the duty of each prosecuting attorney when called upon by said commissioners or by any person by him authorized as aforesaid, to render any legal assistance in his power in proceedings under the provisions of this act, or any subsequent act relative to the adulteration of food, for the sale of impure or unwholesome food or food products.

[Am. by Act No. 245, P. A. 1895. Am. by Act No. 268, P. A. 1899. Am. by Act No. 230, P. A. 1903.]

8. (C. L., 4980) Sec. 8. It shall be unlawful for the State Analyst, while he holds his office to furnish to any individual, firm or corporation, any certificate as to the purity or excellence of any article manufactured or sold by them to be used as food or in the preparation of food.

9. (C. L., 4981) Sec. 9. The commissioner shall make an annual report to the Governor on or before the first day of July in each year, and which shall be printed and published on or before the first day of September next thereafter, which report shall cover the doings of his office for the preceding fiscal year, which shall show, among other things, the number of manufactories and other places inspected and by whom, the number of specimens of food articles analyzed, and the State Analyst's report upon each one; the number of complaints entered against persons for violation of the laws relative to the adulteration of food, the number of convictions had, and the amount of fines imposed therefor, together with such

recommendations relative to the statutes in force as his experience may justify. The commissioner shall also prepare, print and distribute to all the papers of the State, and to such persons as may be interested or may apply therefor, a monthly bulletin, in suitable paper covers, containing results of inspections, the results of analyses made by the State Analyst, with popular explanation of the same, and such other information as may come to him in his official capacity relating to the adulteration of food and drink products and of dairy products, so far as he may deem the same of benefit and advantage to the public; also a brief summary of all the work done during the month by the commissioner and his assistants in the enforcement of the laws of the State, but not more than ten thousand copies of each such monthly bulletin shall be printed.

[Am. by Act No. 245, P. A. 1895. Am. by Act No. 154, P. A. 1897. Am. by Act No. 268, P. A. 1899.]

10. (C. L., 4982) Sec. 10. Any person who shall wilfully hinder or obstruct the Dairy and Food Commissioner, or his deputy or other person or inspector by him duly authorized, in the exercise of the powers conferred upon him by this act, shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than ten dollars nor more than one hundred dollars, or by imprisonment in the county jail for not less than ten days nor more than ninety days, or both such fine and imprisonment in the discretion of the court.

[Added by Act No. 245, P. A. 1895.]

11. (C. L., 4983) Sec. 11. The sum of thirty-five thousand dollars is hereby appropriated for the fiscal year ending June 30, nineteen hundred six, and for each fiscal year thereafter, there is hereby appropriated the sum of thirty-five thousand dollars. Out of the amounts appropriated by this act shall be paid all salaries and expenses and chemical supplies provided for

therein: Provided, That all expenses for stationery and printing shall be audited and paid in the same manner as other State printing and stationery.

[Added by Act No. 245, P. A. 1895. Am. by Act No. 154, P. A. 1897. Am. by Act No. 268, P. A. 1899. Am. by Act No. 186, P. A. 1901. Am. by Act No. 12, P. A. 1905.]

12. (C. L., 4984) Sec. 12. The Auditor General is hereby directed to annually add to and incorporate into the State tax, to be levied each year, the sum of thirty-five thousand dollars, which, when collected, shall be credited to the general fund to reimburse the same for the money appropriated by this act.

[Added by Act No. 245, P. A. 1895. Am. by Act No. 154, P. A. 1897. Am. by Act No. 268, P. A. 1899. Am. by Act No. 186, P. A. 1901. Am. by Act No. 230, P. A. 1903. Am. by Act No. 12, P. A. 1905.]

13. Sec. 13. It shall also be the duty of the Dairy and Food Commissioner to foster and encourage the dairy industry of the State, and, for that purpose, he shall investigate the general conditions of the creameries, cheese factories, condensed milk factories, skimming stations, milk stations and farm dairies in this State, with full power to enter upon any premises for such investigation, with the object in view of improving the quality and creating and maintaining uniformity of the dairy products of the State; and should it become necessary, in the judgment of the Dairy and Food Commissioner, he may cause instruction to be given in any creamery, cheese factory, condensed milk factory, skimming station, milk station or farm dairy, or in any locality in this State, and in order to secure the proper feeding and care of cows, or the practical operation of any plant producing dairy products, and in order to secure such a uniform and standard quality of dairy products in this State, he shall furnish a sufficient number of competent inspectors, the appointment of whom is provided for in section four

of this act, and they shall be duly qualified to act as such inspectors.

[Added by Act No. 12, P. A. 1905.]

14. Sec. 14. Whenever it is determined by the Dairy and Food Commissioner, his deputy or inspectors, that any person is using, selling or furnishing to any skimming station, creamery, cheese factory, condensed milk factory, milk depot, farm dairy, milk dealer, the retail trade or to any consumer of milk, any impure or unwholesome milk or cream, which impurity or unwholesomeness is caused by the unsanitary or filthy condition of the premises where cows are kept, or by the unsanitary or filthy care or handling of the cows, or from the use of unclean utensils, or from unwholesome food, or from any other cause, the person so using, selling or furnishing to any skimming station, creamery, cheese factory, condensed milk factory, milk depot, farm dairy, milk dealer, the retail trade, or to any consumer of milk, any such milk or cream, shall first be notified and warned by the commissioner, his deputy or inspectors not to use, sell, or furnish such milk or cream to such skimming station, creamery, cheese factory, condensed milk factory, milk depot, farm dairy, milk dealer, the retail trade, or to any consumer of milk, and any person failing to obey such notice and warning and continuing to use, sell or furnish to any skimming station, creamery, cheese factory, condensed milk factory, farm dairy, milk dealer or to the retail trade such impure or unwholesome milk or cream, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not less than ten dollars, nor more than fifty dollars, and costs of prosecution, or imprisonment in the county jail, not to exceed ninety days, or until such fine and costs are paid, or both fine and imprisonment at the discretion of the court.

[Added by Act No. 12, P. A. 1905.]

15. Sec. 15. Whenever it is determined by the Dairy

and Food Commissioner, his deputy or inspectors, that unsanitary conditions exist or are permitted to exist in the operation of any skimming station, creamery, cheese factory, condensed milk factory, milk depot or farm dairy, the proprietor or proprietors, or manager of said skimming station, creamery, cheese factory, condensed milk factory or farm dairy, shall be first notified and warned by the commissioner, his deputy or inspectors to place such skimming station, creamery, cheese factory, condensed milk factory, milk depot or farm dairy in a sanitary condition, within a reasonable length of time; and any person or persons owning or operating such skimming station, creamery, cheese factory, condensed milk factory, milk depot or farm dairy, failing to obey such notice and warning, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars, nor more than three hundred dollars, and costs of prosecution, or imprisonment in the county jail, not to exceed ninety days or until such fine and costs are paid, or both fine and imprisonment at the discretion of the court.

[Added by Act No. 12, P. A. 1905.]

16. Sec. 16. It shall be the duty of the proprietor or proprietors, (manager or managers), of every skimming station, creamery, cheese factory, condensed milk factory or milk or cream depot in the State where milk or cream is received by purchase or otherwise from three or more persons within thirty days after the commencement of the operation of said cheese factory, condensed milk factory or milk or cream depot and annually on the first day of April thereafter to register with the Dairy and Food Commissioner upon blanks furnished by said official, the location of such skimming station, creamery, cheese factory, condensed milk factory or milk or cream depot, and the name of its owner or owners and manager. And it shall be the duty of the proprietor or proprietors or manager of every skimming station, creamery, cheese factory,

condensed milk factory or milk or cream depot in this State, where milk or cream is received by purchase or otherwise from three or more persons, to file a report with the Dairy and Food Commissioner, said report to be made on or before April first of each year, upon blanks furnished by said official, and to show the amount of milk or cream received by said skimming station, creamery, cheese factory, condensed milk factory or milk or cream depot during the year ending December 31 preceding; and said report shall show the amount of butter, cheese or condensed milk manufactured during the year, together with a list of the names and postoffice addresses of the patrons of said skimming station, creamery, cheese factory, condensed milk factory or milk or cream depot. Every skimming station, creamery, cheese factory, condensed milk factory or milk or cream depot, so registering and so reporting, shall pay to the office of the State Dairy and Food Commissioner an annual registration fee of five dollars, to be paid at the time of such registration. Whoever violates any of the provisions of this section, shall be deemed guilty of a misdemeanor, and for each and every offense shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars and the costs of prosecution, or by imprisonment in the county jail for not more than thirty days or both. The money so collected by the Dairy and Food Commission shall be paid into the State Treasury and be used to help defray the expenses of the office of the Dairy and Food Commissioner, in addition to the annual appropriation therefor.

[Added by Act No. 12, P. A. 1905. Am. by Act No. 242, P. A. 1913.]

17. Sec. 17. Any person, persons or corporation who shall sell milk or cream from a wagon or other conveyance, depot or store, or who shall sell or deliver milk or cream to a hotel, restaurant, boarding house or any public place, shall be considered a milk dealer; and every milk dealer who shall sell milk or cream from a wagon

or other conveyance, depot or store, or who shall sell, or deliver milk or cream to a hotel, restaurant, boarding house or any public place in any city, town or village of this State, must first obtain a license from the Dairy and Food Commissioner to sell such milk or cream. A license shall be required for each wagon or other conveyance, depot or store. Each dealer shall pay to the Dairy and Food Commissioner a license fee of one dollar for each license so granted, which license must be obtained on or before the first day of July of each year. The moneys received by the Dairy and Food Commissioner, in payment of such licenses, shall be paid into the State Treasury and be used to help defray the expense of the office of the Dairy and Food Commissioner in addition to the annual appropriation. All licenses shall be used only in the name of the owner of the wagon, depot or store, and shall, for the purpose of this act, be prima facie evidence of ownership. No license shall be sold, assigned or transferred. Each license shall record the name, residence, place of business, number of wagons, depots or stores used (where more than one is employed) and the number of the license. Whoever violates any of the provisions of this section, insofar as relates to registration and the securing of licenses, shall be deemed guilty of a misdemeanor, and for each and every offense shall be punished by a fine not less than five dollars, nor more than twenty-five dollars and the costs of prosecution, or by imprisonment in the county jail for not more than thirty days, or both.

[Added by Act No. 12, P. A. 1905.]

18. Sec. 18. Repealed by Act No. 135, P. A. 1915.

19. Sec. 19. The published annual report of the Dairy and Food Commissioner which shall be made to the Governor, shall include a complete accounting of all moneys received by the department from every source, and the amount expended by the department.

[Added by Act No. 12, P. A. 1905.]

20. Sec. 20. All acts and parts of acts inconsistent with this act so far as they are inconsistent are hereby repealed.

This act is ordered to take immediate effect.

[Added by Act No. 12, P. A. 1905.]

(Act No. 167, Public Acts, 1899.)

AN ACT in relation to the powers and duties of the Dairy and Food Commissioner of the State of Michigan.

21. Section 1. *The People of the State of Michigan enact*, That any person who shall obstruct the Dairy and Food Commissioner, or his deputy, or any of his duly appointed inspectors, by refusing to allow him entrance to any place where he is authorized to enter in the discharge of his official duty, or refuses to deliver to him a sufficient sample for the analysis of any article of food or drink sold, offered or exposed for sale, or in his possession for the purpose of sale, wherever the same may be found, when the same is requested and when the value thereof is tendered, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars and the costs of prosecution, or by imprisonment in the county jail not less than ten days or more than ninety days, or by both such fine and imprisonment in the discretion of the court, for each and every offense.

This act is ordered to take immediate effect.

STANDARDS.

(Act No. 64, Public Acts, 1913.)

AN ACT to define and fix standards of purity for foods, beverages, condiments, confectionery and drugs in this state in prosecutions arising under the food, beverage and drug laws of the state of Michigan.

22. Section 1. *The People of the State of Michigan enact*, In all prosecutions arising under the food and drug laws of this State for the manufacture or sale of an adulterated, misbranded or otherwise unlawful article of food, drink, condiment or drug, the latest standards of purity for food products, established by the United States secretary of agriculture, shall be accepted as the legal standards, except in cases where other standards are specifically prescribed by the laws of this State.

GENERAL FOOD LAW.

(Act No. 193, Public Acts, 1895.)

AN ACT to prohibit and prevent adulteration, fraud and deception in the manufacture, and sale of articles of food and drink.

23. (C. L., 5010) Section 1. *The People of the State of Michigan enact*, No person, firm or corporation by themselves or their agents or servants shall within this State, have in their possession with intent to sell, or offer or expose for sale, or sell any article of food which is adulterated or misbranded within the meaning of this act.

[Am. by Act No. 118, P. A. 1897. Am. by Act No. 162, P. A. 1913.]

24. (C. L., 5011) Sec. 2. The term food as used herein, shall include all articles used for food, drink, confectionery or condiment intended to be eaten or drank by man or other animals, whether simple, mixed or compound.

[Am. by Act No. 162, P. A. 1913.]

25. (C. L., 5012) Sec. 3. An article shall be deemed to be adulterated within the meaning of this act:

First, If any substance or substances have been mixed with it so as to lower or depreciate or injuriously affect its quality, strength or purity;

Second, If any inferior or cheaper substance or substances have been substituted wholly or in part for it;

Third, If any valuable or necessary constituent or ingredient has been wholly or in part abstracted from it;

Fourth, If it consists wholly or in part of a diseased, decomposed, putrid, infected, tainted or rotten animal or vegetable substance or article, whether manufactured

or not, or in the case of milk, if it is the product of a diseased animal;

Fifth, If it is colored, coated, polished, bleached or powdered whereby damage or inferiority is concealed, or if by any means it is made to appear better or of greater value than it really is;

Sixth, If it contains any added substance or ingredient which is poisonous or injurious to health: Provided, That nothing in this act shall prevent the coloring of pure butter.

Sec. 3 (a). An article shall be deemed to be misbranded within the meaning of this act:

First, If it is an imitation of or is offered for sale under the name of another article;

Second, If it is labeled or branded so as to deceive or mislead the purchaser, or purport to be a foreign product when not so, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package;

Third, If in package form every package, box, bottle, basket or other container does not bear the true net weight, excluding the wrapper or container, which shall be stated in terms of pounds, ounces and grains avoirdupois weight or the true net measure, which measure, in case of liquids, shall be in terms of gallons of two hundred and thirty-one cubic inches or fractions thereof, as quarts, pints and ounces or the true numerical count, as the case may be, expressed on the face of the principal label in plain English words or numerals, so that it can be plainly read: Provided, however, That reasonable variations shall be permitted and tolerances therefor and also exemptions as to small packages shall be established and promulgated by the Dairy and Food Commissioner: Provided, however, That no penalty of fine, imprisonment or confiscation shall be enforced for any violation of subdivision third of this section prior to September first, nineteen hundred fourteen, as to goods in the hands of wholesalers or retailers when this act takes effect or re-

ceived prior to January one, nineteen hundred fourteen. The provisions of this subdivision shall not apply to beverages in glass containers;

Fourth, If the package containing it or its label shall bear any statement, design or device regarding the ingredients or the substances contained therein, which statement, design or device shall be false or misleading in any particular: Provided, That the provisions of this act shall not apply to mixtures or compounds recognized as ordinary articles or ingredients of articles of food, if each and every package sold or offered for sale bear the name and address of the manufacturer or jobber or retail merchant with an established business, and be distinctly labeled under its own distinctive name, and in a manner so as to plainly and correctly show that it is a mixture or compound and is not in violation of any of the foregoing provisions of this act. Every article of food as defined in the statutes of this State shall be sold by weight, measure or numerical count and as now generally recognized by trade custom, except where the parties otherwise agree, and shall be labeled in accordance with the provisions of the food and beverage laws of this State. Only those products shall be sold by numerical count which cannot well be sold by weight or measure. All foods not liquid, if sold by measure, shall be sold by standard dry measure, the quart of which contains sixty-seven twenty one-hundredths cubic inches, providing that the provisions of this section shall not apply to fresh fruit and vegetables.

[Am. by Act No. 118, P. A. 1897. Am. by Act No. 162, P. A. 1913. Am. by Act No. 311, P. A. 1915.]

26. (C. L., 5013) Sec. 4. No person, by himself or his agents or servants, shall manufacture for sale or offer or expose for sale, or sell, as butter, and the legitimate product of the dairy or creamery, any article not made exclusively of milk or cream, but into which the oil or fat of animals, or any other oils not produced from milk, enters as a component part, has been introduced to

take the place of cream. Whoever violates the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty nor more than five hundred dollars, and the costs of prosecution, or by imprisonment in the county jail, or the State House of Correction and Reformatory at Ionia for not less than ninety days nor more than two years, or by both such fine and imprisonment in the discretion of the court for each and every offense.

27. Sec. 5. No person shall manufacture, deal in, sell, offer or expose for sale or exchange, any article or substance in the semblance of, or in imitation of cheese made exclusively of unadulterated milk or cream, or both, into which any animal, intestinal or offal fats or oils or melted butter in any condition or state, or modification of the same, or oleaginous substances of any kind not produced from unadulterated milk or cream shall have been introduced. All cheese manufactured or sold within this State shall be divided into two grades, to be known as "full cream cheese" and "skimmed milk cheese." All full cream cheese shall contain in water free substance not less than thirty per centum of milk fat, as may appear upon proper test, and all cheese containing less than thirty per centum of milk fat shall be known and branded as "skimmed milk cheese": Provided, That the provisions of this act shall not be construed to apply to such cheese as is known as "fancy cheese" and is under five pounds in weight each, nor to what is known as "Swiss cheese," "brick cheese," "Dutch cheese" or "cottage cheese," and does not contain anything injurious to health.

[Am. by Act No. 73, P. A. 1913.]

28. Sec. 6. Every manufacturer of full cream cheese may put a brand upon each cheese, indicating "full cream cheese," and no person shall use such a brand upon any cheese made from milk from which any of the cream has been taken. Every manufacturer of imitation cheese, as defined by this act, shall put a brand upon each cheese so

manufactured, indicating "skimmed milk cheese," which brand shall be in plain Roman letters, not less than one-half inch in length, and so made, placed or attached that it can easily be seen and read and cannot be easily defaced, and the same shall be placed upon the cloth surrounding such cheese, as well as upon the container thereof.

[Am. by Act No. 118, P. A. 1897. Am. by Act No. 73, P. A. 1913.]

29. Sec. 7. The Dairy and Food Commissioner shall procure and issue to the cheese manufacturers of the State, on proper application, which application shall be made on or before the first day of April in each year, and under such regulation as to the custody and use thereof as he may prescribe, a uniform stencil brand, bearing a suitable device or motto and the words "Michigan full cream cheese," or "Michigan skimmed milk cheese." Every such brand shall be used on the outside of the cheese, and upon the package containing the same, and shall bear a separate number for each separate factory. The said commissioner shall keep a book in which shall be registered the name, location and number of each manufactory using the brand, and the name or names of persons at each factory authorized to use the same. The commissioner shall receive a fee of one dollar for each registration, said fee to be paid by the party applying for the same, which amount shall be accounted for and used as a part of the fund appropriated for the enforcement of the laws of this State with which the Dairy and Food Commissioner is charged. No person shall knowingly offer, sell or expose for sale, in any package, cheese which is falsely branded or labeled. Whoever shall violate the provisions of sections five, six seven or eight of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty nor more than five hundred dollars and the costs of prosecution, or by imprisonment in the county jail or the Michigan Reforma-

tory at Ionia for not less than ninety days nor more than two years, or by both such fine and imprisonment in the discretion of the court for each and every offense.

[Am. by Act No. 73, P. A. 1913.]

30. Sec. 8. The proprietor or keeper of any hotel, restaurant, eating saloon, boarding house or other place where imitation cheese is sold or furnished to persons paying for the same, shall have placed on the walls of every store or room where imitation cheese is sold or furnished, a white placard on which is printed in black ink, in plain Roman letters of not less than three inches in length, and not less than two inches in width, the words "Skimmed Milk Cheese Sold or Used Here," and shall at all times keep the same exposed in such conspicuous place as to be readily seen by any and all persons entering such store, or other room or rooms, and any person or persons violating this section shall be deemed guilty of a misdemeanor, and punished as provided in section seven of this act.

[Am. by Act No. 73, P. A. 1913.]

31. (C. L., 5018) Sec. 9. No person shall within this State manufacture for sale, have in his possession with intent to sell, offer or expose for sale, or sell as lard, any substance not the legitimate and exclusive product of the fat of the hog.

32. (C. L., 5019) Sec. 10. Every person who manufactures for sale, has in his possession with intent to sell, offers or exposes for sale, or sells, any substance made in the semblance of lard, or as an imitation of lard, and which consists of any mixture or compound of animal or vegetable oils or fats other than hog fat, in the form of lard, shall cause the tierce, barrel, tub, pail or package containing the same to be distinctly and legibly branded or labeled "Lard substitute or compound," and every person who manufactures for sale, has in his possession with intent to sell, offers or exposes for sale or

sells, any substance made in the semblance of lard or as an imitation of lard, or as a substitute for lard, and which is designed to take the place of lard, and which consists of any mixture or compound of lard with animal or vegetable oils or fats, shall cause the tierce, barrel, tub, pail or package containing the same to be distinctly and legibly branded or labeled either "Adulterated lard," "Lard compound," or "Lard substitute." Such brands or labels shall be in letters not less than one inch in length and shall be followed with the name of the maker and factory, and the location of such factory.

33. (C. L., 5020) Sec. 11. Every dealer or trader who, by himself or agent, or as the servant or agent of another person, offers or exposes for sale, or sells any form of lard substitute or adulterated lard, as hereinbefore defined, shall securely affix or cause to be affixed to the package wherein the same is contained, offered for sale or sold, a label upon the outside and face of which is distinctly and legibly printed in letters not less than one-half inch in length, the words "Lard substitute" or "Adulterated lard" or "Lard compound" or other appropriate word which shall correctly express its nature and use.

34. (C. L., 5021) Sec. 12. The having in possession of any lard substitute or adulterated lard or lard compound, as hereinbefore defined, which is not branded or labeled as hereinbefore required and directed, upon the part of any dealer or trader, or any person engaged in the public sale of such articles, shall for the purpose of the act be deemed prima facie evidence of intent to sell the same.

35. (C. L., 5022) Sec. 13. No person, firm or corporation in this State shall manufacture for sale, or sell, or offer or expose for sale, as fruit jelly or fruit butter, any jelly or imitation fruit butter or other similar compound made or composed in whole or in part of glucose, dextrine, starch or other substances, and colored in imitation of fruit jelly or fruit butter; nor shall any such

jelly, fruit butter or compound be manufactured or sold, or offered for sale, under any name or designation whatever, unless the same shall be composed entirely of ingredients not injurious to health, and shall not be colored in imitation of fruit jelly, and every can, pail or package of such jelly or butter sold in this State shall be distinctly and durably labeled "Imitation fruit jelly or butter," with the name of the manufacturer and the place where made. Whoever violates the provisions of this section shall be deemed guilty of a misdemeanor, and when convicted thereof shall be punished by a fine of not less than fifty nor more than five hundred dollars, or by imprisonment in the county jail or State House of Correction and Reformatory at Ionia for not less than ninety days nor more than two years, or by both such fine and imprisonment in the discretion of the court.

36. (C. L., 5023) Sec. 14. No packer or dealer in preserved or canned fruits and vegetables, or other articles of food, shall sell or offer for sale such canned articles, unless such articles shall be entirely free from substances or ingredients deleterious to health, and unless such articles bear a mark, stamp, brand or label bearing the name and address of the firm, person or corporation that packs or distributes the same. All "soaked or bleached goods" or goods put up from products dried before canning, shall be plainly marked, branded, stamped or labeled as such, with the words "soaked or bleached goods," in letters not less than two-line pica in size, showing the name of the article and the name and address of the packer or distributor.

[Am. by Act No. 226, P. A. 1915.]

37. (C. L., 5024) Sec. 15. No person shall manufacture or sell, or offer for sale any manufactured or artificial coffee berry in imitation of the genuine berry. No person shall manufacture, sell or offer or expose for sale any ground or prepared coffee, which is adulterated with chicory or other substance not injurious to health, unless each package thereof shall be distinctly labeled or

marked "Coffee compound," together with the name and address of the manufacturer or compounder thereof, and has no other label of whatever name or designation. No person shall offer or expose for sale, have in his possession with intent to sell, or sell any molasses, syrup or glucose, unless the barrel, cask, keg, can or pail containing the same shall be distinctly branded or labeled with the true and appropriate name; nor shall any person offer or expose for sale, have in his possession with intent to sell, or sell any molasses or syrup mixed with glucose, unless the barrel, cask, keg or pail containing the same be distinctly branded or labeled "Glucose mixture," and the per cent in which glucose enters into its composition. Such barrel, cask, keg or pail shall be branded or labeled in a conspicuous place; and such brands or labels shall be in letters of not less than one-half inch in length. Glucose and glucose mixtures shall have no other designation than herein required.

[Am. by Act No. 118, P. A. 1897.]

38. (C. L., 5025) Sec. 16. No person shall within this State manufacture, brew, distill, have or offer for sale, or sell, any spirituous or fermented or malt liquors, containing any substance or ingredient not normal or healthful, to exist in spirituous, fermented or malt liquors, or which may be deleterious or detrimental to health when such liquors are used as a beverage.

39. (C. L., 5026) Sec. 17. The taking of orders or the making of agreements or contracts, by any person, firm or corporation, or by any agent or representative thereof, for the future delivery of any of the articles, products, goods, wares or merchandise embraced within the provisions of this act, shall be deemed a sale within the meaning of this act.

40. (C. L., 5027) Sec. 18. Whoever shall falsely brand, mark, stencil or label any article or product required by this act to be branded, marked, stenciled, or labeled, or shall remove, alter, deface, mutilate, obliterate, imitate or counterfeit any brand, mark, stencil or

label so required, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred nor more than one thousand dollars and the costs of prosecution, or by imprisonment in the county jail or State House of Correction and Reformatory at Ionia, for not less than six months nor more than three years, or by both such fine and imprisonment in the discretion of the court for each and every offense.

41. (C. L., 5028) Sec. 19. Whoever shall do any of the acts or things prohibited, or wilfully neglect or refuse to do any of the acts or things enjoined by this act, or in any way violate any of its provisions, shall be deemed guilty of a misdemeanor, and where no specific penalty is prescribed by this act shall be punished by a fine of not less than twenty-five nor more than five hundred dollars, or by imprisonment in the county jail for a period of not more than ninety days, or by both such fine and imprisonment, in the discretion of the court.

[Am. by Act No. 117, P. A. 1899.]

42. (C. L., 5029) Sec. 20. It shall be the duty of the Dairy and Food Commissioner of the State to investigate all complaints of violations of this act, and take all steps necessary to its enforcement. It shall be the duty of all prosecuting officers of this State to prosecute to completion all suits brought under the provisions of this act upon the complaint of the commissioner or of any citizen. It shall be the duty of all food inspectors in cities to examine all complaints made to them of violation of this act, and to render assistance in enforcing its provisions. It shall also be the duty of all health boards in cities and health officers in townships to take cognizance of and report or prosecute all violations of this act that may be brought to their notice, or they may have cognizance of, within their jurisdiction.

43. Sec. 21. All acts and parts of acts inconsistent with this act are hereby repealed.

BUCKWHEAT FLOUR.

(Act No. 208, Public Acts, 1903.)

AN ACT in relation to the manufacture and sale of buckwheat flour.

44. Section 1. *The People of the State of Michigan enact*, Within this State no person shall manufacture, offer or expose for sale, keep in possession with intent to sell, or sell, any ground buckwheat containing any product of wheat, corn, rice or other foreign substance, unless each and every package thereof be distinctly and legibly branded or labeled "Buckwheat Flour Compound" in letters not less than one-half inch in length and be followed with the name of the maker and factory and the location of such factory.

45. Sec. 2. Any brand or label herein required shall be an inseparable part of the general or distinguishing label, and such label shall be that principal and conspicuous sign under which it is sold, and any other label or printed matter upon the package shall not be in contravention of the requirements of this act.

46. Sec. 3. The having in possession of any buckwheat flour compound, which is not branded or labeled as hereinbefore required and directed upon the part of any person engaged in the public or private sale of such article, shall, for the purpose of this act, be deemed prima facie evidence of intent to sell the same.

47. Sec. 4. The taking of orders or the making of agreements or contracts by any person, firm or corporation or by any agent or representative thereof, for the future delivery of buckwheat flour compound shall be deemed a sale within the meaning of this act.

48. Sec. 5. Whoever shall do any of the acts or things prohibited, or neglect or refuse to do any of the acts or things enjoined by this act, or in any way violate any of the provisions, shall be deemed guilty of a misdemeanor,

and shall be punished by a fine not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail for a period of not less than thirty nor more than ninety days, or by both such fine and imprisonment in the discretion of the court.

49. Sec. 6. Act number eighty-four of the Public Acts of eighteen hundred ninety-seven, entitled "An Act to prohibit and prevent adulteration, fraud and deception in the manufacture and sale of buckwheat flour," being section four thousand nine hundred ninety-four to five thousand two, both inclusive, of the Compiled Laws of one thousand eight hundred ninety-seven is hereby repealed.

VINEGAR.

Act No. 384, Session Laws 1913.

AN ACT in relation to the manufacture and sale of vinegar, and to repeal act number seventy-one of the Public Acts of eighteen hundred ninety-seven, being sections five thousand three to five thousand six inclusive of the Compiled Laws of eighteen hundred ninety-seven, and all other acts and parts of acts inconsistent with this act.

50. Section 1. *The People of the State of Michigan enact*, No person shall manufacture for sale, offer or expose for sale, sell or deliver, or have in his possession with intent to sell or deliver, any vinegar not in compliance with the provisions of this act.

51. Sec. 2. The word "vinegar" as used herein is limited to a water solution of acetic acid derived by the alcoholic and subsequent acetous fermentations of fruits, grain, vegetables, sugar or syrups, and if not distilled must carry in solution the extractive matter derived solely from the substances indicated on the label as its source.

52. Sec. 3. No vinegar shall be sold or exposed for

sale as apple or cider vinegar which is not the legitimate product of pure apple juice. The term "cider vinegar" as used herein shall be construed to mean vinegar derived by the alcoholic and subsequent acetous fermentation of the expressed juice of apples, the acidity, solids and ash of which have been derived exclusively from apples, and which contains not less than four per cent of absolute acetic acid. Cider vinegar which during the course of manufacture has developed in excess of four per cent acetic acid, may be reduced to a strength of not less than four per cent, and cider vinegar so reduced shall not be regarded as adulterated. Every manufacturer or producer of cider vinegar shall plainly brand on the head of the cask, barrel or keg or other container of such vinegar, his name, place of business and the words "fermented cider vinegar," and no person shall mark or brand as cider vinegar any package containing that which is not cider vinegar. Any vinegar sold or offered for sale shall be marked or branded plainly upon the package or container from which it is sold and also on the original package or container in which it is sold or delivered, in a manner to show its true character and source.

53. Sec. 4. All sugar vinegar sold or exposed for sale as such shall be strictly and distinctly fermented from sucrose, molasses or refiner's syrup.

54. Sec. 5. No vinegar shall be sold or exposed for sale as malt vinegar which is not fermented strictly and distinctly from barley malt, or cereals whose starch has been converted to malt.

55. Sec. 6. No vinegar shall be sold or exposed for sale in which foreign substances, drugs or acids shall have been introduced. No vinegar shall contain any artificial coloring matter, and all vinegar shall have an acidity of not less than four per cent by weight of absolute acetic acid. If vinegar contains any artificial matter, or less than the required amount of acidity, it shall be deemed to be adulterated.

56. Sec. 7. All vinegar made by fermentation and oxidation without the intervention of distillation, shall

be branded "fermented" vinegar, with the name of the fruit or substance from which such vinegar has been made.

57. Sec. 8. All vinegar made by acetous fermentation of dilute distilled alcohol shall be branded "distilled" vinegar, together with the name of the substance or substances from which it is made, and all vinegar made wholly or in part from distilled vinegar shall be conspicuously labeled "distilled vinegar."

58. Sec. 9. Whoever violates any of the provisions of this act shall, upon conviction, be punished by a fine of not more than two hundred dollars or imprisonment in the county jail not to exceed six months or both such fine and imprisonment in the discretion of the court.

59. Sec. 10. Act number seventy-one of the Public Acts of eighteen hundred ninety-seven, being sections five thousand three to five thousand six of the Compiled Laws of eighteen hundred ninety-seven, and all other acts and parts of acts inconsistent with this act are hereby repealed.

MILK.

Act No. 26, Public Acts, 1873.)

AN ACT to prevent and punish offenders for the adulteration of milk, and the products made therefrom, and to repeal an act entitled "An act to prevent the adulteration of milk and to prevent the traffic in impure and unwholesome milk," approved March thirty-first, eighteen hundred and seventy-one.

60. (C. L., 11411) Section 1. *The People of the State of Michigan enact*, That whoever shall knowingly sell to any person or persons, or sell, deliver or bring to be manufactured to any cheese or butter manufactory in this State, any milk diluted with water, or in any way adulterated, or milk from which any cream has been

taken, or milk commonly known as "skimmed milk," or shall keep back any part of the milk known as "strip-pings," with intent to defraud, or shall knowingly sell milk, the product of a sick or diseased animal or animals or any milk produced from any cow fed upon the refuse of a distillery, or of a brewery, or upon any substance deleterious to the quality of the milk, or shall knowingly use any poisonous or any deleterious material in the manufacture of any cheese or butter, or shall knowingly sell or offer to sell any cheese or butter, in the manufacture of which any poisonous or deleterious substance has been used, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not less than ten dollars nor more than one hundred dollars, and may be committed to the county jail until such fine shall be paid: Provided, That such imprisonment shall not exceed ninety days; and shall be liable in double the amount of damages to the person or persons, firm, association, or corporation upon which such fraud shall have been committed. An act entitled "An act to prevent the adulteration of milk and to prevent the traffic in impure and unwholesome milk," approved March thirty-first, eighteen hundred and seventy-one, is hereby repealed: Provided, That any right accrued or forfeiture incurred under said act, shall remain valid and binding, and may be enforced under said act as if the same were not repealed.

(Act No. 246, Public Acts, 1887.)

AN ACT to prevent the sale of impure, unwholesome, adulterated, or swill milk in the State of Michigan, and to provide for inspectors.

61. (C. L., 11412) Section 1. *The People of the State of Michigan enact*, That it shall be unlawful for any person, either by himself or agent, to sell or expose

for sale within the State of Michigan any unwholesome watered, or adulterated or impure milk or swill milk or colostrum or milk from cows kept upon garbage, swill or any substance in a state of fermentation or putrefaction or other deleterious substances, or from cows kept in connection with any family in which there are infectious diseases. The addition of water or ice to milk is hereby declared an adulteration.

[Am. by Act No. 219, P. A. 1889.]

62. (C. L., 11413) Sec. 2. Any person who shall violate any of the provisions of the preceding section shall be punished by a fine not to exceed one hundred dollars or (by) imprisonment not to exceed three months or by both such fine and imprisonment in the discretion of the court.

63. (C. L., 11414) Sec. 3. It shall be the duty of the metropolitan police commissioners of the city of Detroit, by and with the consent and advice of the board of health of the city of Detroit, to appoint an inspector, who shall be a person of previous practical experience. Said inspector may be created captain, sergeant or roundsman of the said police force of the city of Detroit, at the option of the board of metropolitan police commissioners.

64. (C. L., 11415) Sec. 4. It shall be the duty of said inspector to personally view, so far as possible, all milk exposed for sale in said city, and to visit all dairy houses, barns or stables in said city or the county of Wayne, to inspect the same, and the animals held therein, and to visit all places where milk is kept or exposed for sale in the city of Detroit, and to inspect and ascertain the condition of said milk. He may detail any patrolman of said city to assist him in the performance of any or all of the duties enjoined on him by this act: Provided, always, That said inspector and any policeman so detailed shall always be subject to the provisions of the law establishing and governing the metropolitan police of said city.

65. (C. L., 11416) Sec. 5. It shall be the duty of said inspector or of his assistant, and of all other inspectors appointed under this act, to make complaint in writing before a police justice or justice of the peace, or other court having jurisdiction thereof, of every violation of this act coming to his knowledge.

[Am. by Act No. 219, P. A. 1889.]

66. (C. L., 11417) Sec. 6. Each and every quantity of milk sold or exposed for sale contrary to the provisions of this act, shall constitute a separate offense.

67. (C. L., 11418) Sec. 7. Any person who shall refuse to permit the said inspector, or his assistant (assistants) to perform his duty under this act, either by refusing him entrance to his premises or by concealing any milk, or refusing to permit any milk or animal or premises wherein animals are kept, to be viewed and inspected as herein provided, or by in any manner hindering or resisting any said inspector or assistant inspector in the performance of his duty, shall be guilty of a misdemeanor, and punished therefor.

68. (C. L., 11419) Sec. 8. Authority is hereby given the common council of any city, and the board of trustees or council of any village, to appoint an inspector of milk in any such city or village, and to fix their compensation, and when appointed the said inspectors of milk shall have all the powers given by section four of this act, and shall perform all the duties required of inspectors of milk as provided herein, and such other powers and duties as may be conferred or imposed by the ordinances of said cities or villages.

69. (C. L., 11420) Sec. 9. Whoever shall adulterate by himself or by his servant or agent, or sell, exchange or deliver, or have in his custody or possession with intent to sell or exchange the same, or exposes or offers for sale or exchange, adulterated milk or milk to which water or any foreign (substance) substances in any state of fermentation or putrefaction, or from sick or diseased

cows, shall be guilty of a misdemeanor, and shall, for every such offense, be punished by a fine not exceeding one hundred dollars or by imprisonment in the county jail or the State House of Correction and Reformatory at Ionia not exceeding three months.

[Added by Act No. 219, P. A. 1889.]

70. (C. L., 11421) Sec. 10. Whoever shall adulterate, himself or by his servant or agent, sell, exchange or deliver, or have in his custody or possession with intent to sell or exchange the same, or exposes or offers for sale as pure milk, any skimmed milk from which the cream or any part thereof has been removed shall be guilty of a misdemeanor, and shall for such offense, be punished by the penalty provided in the preceding section.

[Added by Act No. 219, P. A. 1889.]

71. (C. L., 11422) Sec. 11. Any dealer in milk who shall by himself, servant or agent, sell, exchange or deliver, or have in his custody or possession with intent to sell, exchange or deliver the same, milk from which the cream or any part thereof has been removed, unless in a conspicuous place above the center upon the outside of every vessel, can or package from which any such milk is sold, the words "Skimmed milk" are distinctly painted in letters not less than one inch in length, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding one hundred dollars or by imprisonment in the county jail or Detroit House of Correction not exceeding three months.

[Added by Act No. 219, P. A. 1889.]

72. (C. L., 11423) Sec. 12. If milk sold or offered for sale under the provisions of this act as pure milk, is shown upon analysis by weight to contain more than eighty-seven and fifty one-hundredths per centum of watery fluid, or to contain less than twelve and fifty one-hundredths of milk solids per centum, or less fat than

three per centum, or if the specific gravity at 60 degrees Fahrenheit is not between 1.29-1000 to 1.33-1000, it shall be deemed to be adulterated. If milk sold or offered for sale under the provisions of this act as skimmed milk has a specific gravity at 60 degrees Fahrenheit less than 1.032 and greater than 1.037, it shall be deemed to be adulterated.

[Added by Act No. 219, P. A. 1889.]

73. (C. L., 11424) Sec. 13. Whenever any inspector of milk has reason to believe that any milk found by him is adulterated, he shall take specimens thereof and test the same with such instrument or instruments as are used for such purposes, and he shall make an analysis thereof, showing total solids, the percentage of butter, the percentage of water and the percentage of ash; and if the result of such test and analysis indicates that the milk has been adulterated or deprived of its cream or any part thereof, the same shall be prima facie evidence of such adulteration in a prosecution under this act.

[Added by Act No. 219, P. A. 1889.]

74. (C. L., 11425) Sec. 14. Any person who shall remove the cream or any part thereof from milk to be sold as pure milk to any manufactory in which milk is used as a material in the process of production, and any person who shall, in any manner, adulterate such milk, either by the addition of water or otherwise, shall be guilty of a misdemeanor, and shall, for every such offense be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail or Detroit House of Correction not exceeding ninety days.

[Added by Act No. 219, P. A. 1889.]

(Act No. 106, Public Acts, 1899.)

AN ACT in relation to the sale and delivery of milk.

75. Section 1. *The People of the State of Michigan enact*, No person shall offer or expose for sale, sell, exchange or deliver, or have in his possession with intent to sell, exchange or deliver, any milk to which water, chemicals or preservatives, or any other foreign substance has been added. The term milk as used in this act shall include all skimmed milk, buttermilk, cream and milk in its natural state as drawn from the cow.

76. Sec. 2. Whoever shall do any of the acts or things prohibited, or neglects or refuses to do any of the acts or things enjoined by this act, or in any way violates any of its provisions, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than one dollar nor more than one hundred dollars and the costs of prosecution, or by imprisonment in the county jail not more than ninety days, or by both such fine and imprisonment in the discretion of the court.

This act is ordered to take immediate effect.

INSANITARY MILK AND CREAM.

Act No. 222, Session Laws 1913.

AN ACT to prevent and punish the sale of unclean and insanitary cream and milk and the use thereof in the manufacture of food products and to prohibit unclean and insanitary conditions of creameries, cheese factories, ice cream factories and milk dealer's establishments or out-fits and fixing standards of sanitary milk and cream, and to regulate the sale and transportation of the same.

77. Section 1. *The People of the State of Michigan enact*, For the purpose of this act, the term "milk" shall mean the fresh, clean, lacteal secretion obtained by the

complete milking of one or more healthy cows, properly fed and kept, excluding that obtained within eight days before and four days after calving, and contains not less than eight and one-half per cent of solids not fat, and not less than three per cent of milk fat; and the term "cream" shall mean that portion of milk, rich in milk fat, which rises to the surface of milk on standing, or is separated from it by centrifugal force, is fresh and clean, and contains not less than eighteen per cent of milk fat. Milk which shall be drawn from cows that are kept in barns or stables which are not reasonably well lighted and ventilated, or that are kept in barns or stables that are filthy from an accumulation of animal feces and excreta or from any other cause, or milk which shall be drawn from cows which are themselves in a filthy condition; or milk kept or transported in dirty, rusty or opened-seamed cans or other utensils; or milk that is stale, putrescent, or putrid; or milk to which has been added any unclean, or unwholesome foreign substance; or milk which has been kept exposed to foul or noxious air or gases in barns occupied by animals, or kept exposed in dirty, foul or unclean places or conditions, is hereby declared to be insanitary milk. Cream produced from any such aforesaid insanitary milk; or cream produced by the use of a cream separator, which separator had not been thoroughly washed, cleansed and scalded after previous use in the separation of cream from milk; or cream produced by the use of a cream separator placed or stationed in any unclean or filthy room or place or in any building containing a stable wherein are kept cattle or other animals, unless such cream separator is so separated and shielded by a partition from the stable portion of such building as to be free from all foul or noxious air or gases which issue or may issue from such place or stable; or cream that is stale, putrescent, or putrid; or cream that is kept or transported in dirty, rusty or open-seamed cans or other utensils; or cream which has been kept exposed to foul or noxious air or gases in barns occupied by animals, or in dirty, foul or

unclean places or conditions, is hereby declared to be insanitary cream.

78. Sec. 2. No person shall by himself, his servant or agent, or as the servant or agent of any other person, or as the officer, servant or agent of any firm or corporation, sell or offer for sale, furnish or deliver, or have in possession or under his control with intent to sell or offer for sale, or furnish, or deliver to any person, firm or corporation as food for man, or to any creamery, cheese factory, milk condensing factory, or milk or cream dealer, any insanitary milk or any insanitary cream.

79. Sec. 3. No person shall by himself, his servant or agent, or as the servant or agent of any other person, or as the servant or agent of any firm or corporation, manufacture for sale any article of food for man from any insanitary milk or from any insanitary cream.

80. Sec. 4. All premises and utensils used in the handling of milk, cream, and by-products of milk, and all premises and utensils used in the preparation, manufacture, or sale, or offering for sale of any food product for man from milk or cream or the by-products of milk, which shall be kept in an unclean, filthy or noxious condition are hereby declared to be insanitary. It shall be unlawful for any person, firm, or corporation engaged in selling, or furnishing milk, cream, or any by-products of milk, intended for use as food for man; and it shall be unlawful for any person, firm or corporation engaged in selling or furnishing milk, cream, or any by-products of milk, to any creamery, cheese factory, milk condensing factory, or to any place where such milk, cream, or by-products of milk are manufactured or prepared into a food product for man, and for sale as such; and it shall be unlawful for any milk dealer, or an employe of such milk dealer, or any person, firm or corporation, or the employ of such person, firm, or corporation, who operates a creamery, cheese factory, milk condensing factory, or who manufactures or prepares for sale any article of food for man from milk, cream, or by-product of milk, or who manufactures, re-works, or packs butter for sale as

a food product, to maintain his premises and utensils in an insanitary condition.

81. Sec. 5. Any person, firm or corporation, not a common carrier who receives from a common carrier in cans, bottles or other vessels any milk, or cream, ice cream or other dairy product intended as food for man, which has been transported over any railroad or boat line or by other common carrier, when such cans, bottles or vessels are to be returned, shall cause the said cans, bottles, or other vessels to be thoroughly washed and cleansed before return shipment.

82. Sec. 6. Any person who by himself, his servant or agent, or as the servant or agent of any other person, or as the officer, servant or agent of any firm or corporation, who violates any provision of this act shall, upon conviction thereof, be punished by a fine of not more than one hundred dollars for each and every offense, or shall be imprisoned in the county jail not more than sixty days.

CONDENSED MILK LAW.

Act No. 176, Session Laws 1913.

AN ACT to regulate the sale of condensed milk, and to provide for the labeling thereof so as to prevent fraud and deception.

83. Section 1. *The People of the State of Michigan enact*, Every container of evaporated, concentrated or condensed whole milk, and every container of evaporated, concentrated or condensed skimmed milk, sold or offered for sale or had in possession or custody with intent to sell by any person, firm or corporation within this State, shall have plainly printed thereon in the English language, or attached thereto on some firmly affixed tag or label, a formula for extending the said evaporated, concentrated or condensed milk and said

evaporated, concentrated or condensed skimmed milk, respectively, with water. The formula for the extension of said evaporated, concentrated or condensed whole milk shall be such that the resulting milk product shall not be below the Michigan standard of milk solids or fat for whole milk, and shall be in the following form: By adding parts of water to one part of the contents of this can a resulting milk product will be obtained which will not be below the legal standard for whole milk. The formula for the extension of said evaporated, concentrated or condensed skimmed milk shall be such that the resulting milk product shall not be below the Michigan standard of milk solids for skimmed milk, and shall be in the following form: By adding..... parts of water to one part of the contents of this can a resulting milk product will be obtained which will not be below the legal standard for skimmed milk.

84. Sec. 2. Whoever, himself or by his servant or agent, or as the servant or agent of any person, firm or corporation, sells, exchanges or delivers, or has in his custody or possession with intent to sell, exchange or deliver any container of evaporated, concentrated or condensed milk, within this State, not marked or labeled in compliance with the provisions of this act shall, for the offense, be punished by a fine of not more than one hundred dollars or by imprisonment for not less than three nor more than six months.

85. Sec. 3. The provisions of this act with reference to the labeling of containers of condensed, concentrated and evaporated skimmed milk shall take effect upon the first day of October, in the year nineteen hundred thirteen; the remaining provisions of this act shall take effect upon the first day of January in the year nineteen hundred fourteen.

OLEOMARGARINE.

(Act No. 63, Public Acts, 1913.)

AN ACT to regulate the manufacture, display, advertisement and sale of oleomargarine or imitation butter and to prevent fraud and deception therein and to provide penalties for violations thereof, and to repeal act number one hundred forty-seven of the Public Acts of eighteen hundred ninety-nine, entitled "An act in relation to the manufacture and sale of oleomargarine or imitation butter."

86. Section 1. *The People of the State of Michigan enact*, No person shall sell, expose or offer for sale or exchange, or have in his possession with intent to sell or exchange, any oleomargarine or other substance made in imitation of butter, and which is intended to be used as a substitute for butter, unless each and every vessel, package, roll or parcel of such substance has distinctly and durably printed, stamped or stenciled thereon in black letters the true name of such substance, in ordinary bold faced capital letters, not less than five line pica in size; and also the name and address of the manufacturer, in ordinary bold faced letters, not less than pica in size.

87. Sec. 2. No person shall sell, exchange or deliver any oleomargarine or other substance made in imitation of butter, and which is intended to be used as a substitute for butter, unless he shall also deliver to the purchaser of each and every roll, package or parcel of such oleomargarine or other substance, at the time of the delivery of the same, a distinct label, on which is plainly and legibly printed in black ink in ordinary bold faced capital letters not less than five line pica in size, the true name of such substance and also the name and address of the manufacturer, in ordinary bold faced letters not less than pica in size.

[Am. by Act No. 116, P. A. 1915.]

88. Sec. 3. The proprietor or keeper of any store, hotel, restaurant, eating saloon, boarding house, or other place where oleomargarine is sold or furnished to persons paying for the same, shall have placed on the walls of every store or room where oleomargarine is sold or furnished a white placard on which is printed in black ink, in plain Roman letters of not less than three inches in length, and not less than two inches in width, the words "Oleomargarine sold or used here," and shall at all times keep the same exposed in such conspicuous place as to be readily seen by any and all persons entering such store, or other room or rooms.

89. Sec. 4. No person shall use in any way, in connection or association with the sale or exposure for sale or advertisement of any substance designed to be used as a substitute for butter, the word "butter," "creamery," or "dairy," or the name or representation of any breed of dairy cattle, or any combination of such word or words and representation, or any other words or symbols or combination thereof commonly used in the sale of butter.

90. Sec. 5. For the purpose of this act the word "butter" shall be understood to mean the food product usually known as butter, and which is made exclusively from milk or cream, or both, with or without common salt, and with or without additional coloring matter.

91. Sec. 6. For the purpose of this act certain manufactured substances, certain extracts and certain mixtures and compounds, including such mixtures and compounds with butter, shall be known and designated as "oleomargarine," namely: All substances heretofore known as oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine and neutral; all mixtures and compounds of oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine and neutral; all lard extracts and tallow extracts; and all mixtures and compounds of tallow, beef fat, suet, lard, lard oil, vegetable oil, butterine, lardine, suine and neutral; all lard extracts and tallow extracts; and all mixtures and compounds of tallow, beef

fat, suet, lard, lard oil, vegetable oil, intestinal fat, and offal fat, made in imitation or semblance of butter, or when so made, calculated or intended to be sold or used as butter or for butter.

92. Sec. 7. Whoever violates any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars, nor more than five hundred dollars, and the costs of prosecution, or by imprisonment in the county jail or state house of correction and reformatory at Ionia, for not less than six months nor more than three years, or by both such fine and imprisonment in the discretion of the court, for each and every offense. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

93. Sec. 8. Act number one hundred forty-seven of the Public Acts of eighteen hundred ninety-nine, is hereby repealed.

(Act No. 22, Public Acts, 1901.)

AN ACT to prevent deception in the manufacture and sale of imitation butter.

94. Section 1. *The People of the State of Michigan enact*, No person, by himself or his agents, or servants, shall render or manufacture, sell, or offer for sale, expose for sale, or have in his possession with intent to sell, any article, product or compound made wholly or in part out of any fat, oil or oleaginous substance or compound thereof, not produced from unadulterated milk or cream from the same, which shall be in imitation of yellow butter produced from pure unadulterated milk or cream of the same: Provided, That nothing in this act shall be construed to prohibit the manufacture or sale of oleomargarine in a separate and distinct form, and in such manner as will advise the consumer of its real character, free

from coloration or ingredient that causes it to look like butter.

95. Sec. 2. Whoever violates any of the provisions of section one of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, and the costs of prosecution, or by imprisonment in the county jail or State House of Correction and Reformatory at Ionia for not less than six months nor more than three years, or by both such fine and imprisonment in the discretion of the court, for each and every offense.

RENOVATED BUTTER.

(Act No. 243, Public Acts, 1903, as amended.)

AN ACT in relation to the manufacture and sale of renovated butter.

96. Section 1. *The People of the State of Michigan enact*, No person, firm or corporation shall manufacture for sale, offer or expose for sale, sell, exchange or deliver, or have in his possession with the intent to sell, exchange or deliver, any butter that is produced by taking original packing stock butter or other butter, or both, melting the same so that the butter fat can be drawn off or extracted, mixing the said butter fat with skimmed milk, or milk or cream, or other milk product, and rechurning or reworking the said mixture; nor shall any person, firm or corporation manufacture for sale, offer or expose for sale, sell, exchange or deliver, or have in his possession for any such purpose any butter which has been subjected to any process by which it is melted, clarified or refined, and made to resemble butter, and is commonly known as boiled, process or renovated butter, and which for the

purpose of this act is hereby designated as "Renovated Butter," unless the same shall be branded or marked as provided in section two of this act.

97. Sec. 2. Whoever, himself or by his agent or as the servant or agent of another person, shall sell, expose for sale or have in his custody or possession with the intent to sell any renovated butter as defined in section one of this act, shall have the words "renovated butter" conspicuously stamped, labeled or marked in one or two lines and in plain Gothic letters, at least three-eighths of an inch square, so that the words cannot easily be defaced, upon two sides of each and every tub, firkin, box or package containing said renovated butter; or if such butter is exposed for sale uncovered, or not in a case or package, a placard containing said words in the same form as above described in this section shall be attached to the mass in such a manner as to be easily seen and read by the purchaser. When renovated butter is sold from such packages or otherwise at retail in print, roll or other form, before being delivered to the purchaser, it shall be wrapped in wrappers plainly stamped on the outside thereof with the words "renovated butter" printed or stamped thereon in one or two lines, and in plain Gothic letters at least three-eighths of an inch square, and such wrappers shall contain no other words or printing thereon, and said words "renovated butter" so stamped or printed on the said wrapper shall not be in any manner concealed, but shall be in plain view of the purchaser at the time of the purchase. The proprietor or keeper of any hotel, restaurant, eating saloon, boarding house, or other place where renovated butter is furnished to persons paying for the same, shall have placed on the walls of every store or room where renovated butter is furnished, a white placard on which is printed in black ink, in plain Roman letters of not less than three inches in length, and not less than two inches in width, the words "renovated butter used here," and shall at all times keep the same exposed in such conspicuous place as

to be readily seen by any and all persons entering such store, hotel, restaurant or other room or rooms.

[Am. by Act No. 119, P. A. 1909. Am. by Act No. 15, P. A. 1915.]

98. Sec. 3. Whoever shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars, and the costs of prosecution, or by imprisonment in the county jail or Michigan Reformatory at Ionia, for not less than six months nor more than three years, or by both such fine and imprisonment, in the discretion of the court, for each and every offense.

99. Sec. 4. Act number two hundred fifty-four of the public acts of eighteen hundred ninety-nine, entitled "An act to regulate the sale of butter produced by taking original packing stock and other butter and melting the same so that the butter oil can be drawn off, mixed with skimmed milk or other material, and by emulsion or other process produce butter, and butter produced by any similar process and commonly known as "process" butter; providing for the enforcement thereof, and punishment for the violation of the same," is hereby repealed.

BUTTER & CREAM STANDARDS.

(Act No. 244, Public Acts, 1913.)

AN ACT to regulate the sale of butter and cream in the State of Michigan, and to prescribe a penalty for the violation of this act.

100. Section 1. *The People of the State of Michigan enact*, No person shall offer or expose for sale, have in his possession with intent to sell, or sell as butter any product which contains less than eighty per cent

of milk fat, and which is not made exclusively from milk or cream, or both, with or without common salt and with or without additional coloring matter.

101. Sec. 2. No person shall offer or expose for sale, have in his possession with intent to sell, or sell as cream any product which contains less than eighteen per cent of milk fat, and which is not that portion of milk, rich in milk fat, which rises to the surface of milk on standing, or is separated from it by centrifugal force, and which is not clean: Provided, That the provisions of this act shall not be deemed to apply to any person not a manufacturer or producer of butter and cream, who has bought the products mentioned in this act for resale, and when found to be under the standard prescribed by this act, shall furnish information from whom his products were received.

102. Sec. 3. Whoever shall do any of the acts or things prohibited, or wilfully neglect or refuse to do any of the acts or things enjoined by this act, or in any way violate any of its provisions, shall be deemed guilty of a misdemeanor, and where no specific penalty is prescribed by this act shall be punished by a fine of not less than twenty-five nor more than one hundred dollars, or by imprisonment in the county jail for a period of not more than ninety days, or by both such fine and imprisonment in the discretion of the court.

CANDY.

(Act No. 207, Public Acts, 1911.)

AN ACT to prevent the adulteration of candies and to regulate the sale thereof.

103. Section 1. *The People of the State of Michigan enact*, No person firm, or corporation shall manufacture for sale, offer or expose for sale, sell, exchange or deliver, or have in his possession with the intent to sell, exchange or deliver, any candies or confectioneries adulterated by the admixture of terra alba, barytes talc or other earthy or mineral substances, or any poisonous colors, flavors or extracts, or other deleterious ingredients detrimental to health.

104. Sec. 2. Whoever violates any of the provisions of section one of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than one thousand dollars and the costs of prosecution, or by imprisonment in the county jail or State House of Correction and Reformatory at Ionia for not less than six months nor more than three years, or by both such fine and imprisonment in the discretion of the court for each and every offense.

105. Sec. 3. All acts and parts of acts inconsistent with this act are hereby repealed.

PEPPER.

(Act No. 180, Public Acts, 1901.)

AN ACT to provide for the manufacture and sale of black pepper in this State and to provide a penalty for the violation of the provisions of this act.

106. Section 1. *The People of the State of Michigan enact*, Within this State no person, firm or corporation shall manufacture, offer or expose for sale, keep in possession with intent to sell, or sell any ground or whole black pepper containing any foreign substance whatever. All black pepper shall contain not more than six and one-half per cent ash or mineral matter; and shall contain not less than twenty-five per cent starch as determined by the diastase method; and shall contain not less than six-tenths of one per cent nor more than one and three-fourths per cent volatile ether extract; and shall contain not more than ten per cent nor less than six and one-half per cent of non-volatile ether extract; and shall contain not more than sixteen per cent of crude fibre.

107. Sec. 2. Whoever shall do any of the acts or things prohibited, or neglects or refuses to do any of the acts or things enjoined by this act, or in any way violates any of its provisions, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not less than twenty-five dollars nor more than five hundred dollars and the costs of the prosecution, or by imprisonment in the county jail not more than ninety days, or by both such fine and imprisonment, in the discretion of the court.

CORN SYRUP.

(Act No. 123, Public Acts, 1903.)

AN ACT in relation to the sale of corn syrup.

108. Section 1. *The People of the State of Michigan enact*, No person shall offer or expose for sale, have in his possession with intent to sell, or sell, any cane syrup, beet syrup, or glucose, unless the barrel, cask, keg, can, pail or package containing the same be distinctly branded or labeled with the true and appropriate name; nor shall any person offer or expose for sale, have in his possession with intent to sell, or sell any cane syrup or beet syrup mixed with glucose unless the barrel, cask, keg, can, pail or package containing the same be distinctly branded or labeled "Glucose Mixture" or "Corn Syrup," in plain gothic type not less than three-eighths of an inch square, with the name and percentage by weight of each ingredient contained therein plainly stamped, branded or stenciled on each package in plain Gothic letters not less than one-quarter of an inch square. Each and every package of syrup either simple or mixed shall bear the name and address of the manufacturer. Such mixtures or syrups shall have no other designation or brand than herein required that represents or is the name of any article which contains a saccharine substance; and all brands or labels required shall be an inseparable part of the general or distinguishing label, and that the general or distinguishing label shall be that principal and conspicuous sign under which it is sold.

109. Sec. 2. Whoever shall do any of the acts or things prohibited, or neglect or refuse to do any of the acts or things required by this act, or in any way violate any of the provisions, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not less than twenty-five dollars nor more than one hundred dollars, or

by imprisonment in the county jail for a period of not less than thirty nor more than ninety days, or by both such fine and imprisonment in the discretion of the court.

This act is ordered to take immediate effect.

PRESERVATIVES.

(Act No. 7, Public Acts, 1905.)

AN ACT in relation to the use of preservatives in food products.

110. Section 1. *The People of the State of Michigan enact*, No person, firm or corporation shall manufacture, sell, offer for sale, expose for sale, or have in his possession with intent to sell, any food product containing benzoic acid or benzoate of sodium, or any other harmless preservative, unless each and every package containing the same shall, in the condition in which it is exposed for sale, be distinctly, conspicuously, and legibly branded, labeled or marked, in plain English letters, with the words "Prepared with" followed by the proper English name of the preservative used: Provided, That nothing in this act shall be construed to prohibit or regulate, by branding or otherwise, the use as a preservative of common salt, syrup, sugar, salt petre, spices, alcohol, vinegar, or wood smoke: And provided Further, That the provisions of this act shall not apply to dairy products.

111. Sec. 2. Whoever shall do any of the acts or things prohibited, or neglect or refuse to do any of the acts or things required by this act, or in any way violate any of its provisions, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not less than ten dollars nor more than one hundred dollars, or by imprisonment in the county jail for a period of not more

than ninety days, or by both such fine and imprisonment in the discretion of the court.

This act is ordered to take immediate effect.

MAPLE SUGAR AND SYRUP.

(Act No. 170, Public Acts, 1893.)

AN ACT to prohibit the adulteration of maple sugar, maple molasses and maple syrup.

112. (5007) Section 1. *The People of the State of Michigan enact*, That it shall be unlawful for any person, dealer, firm, manufacturer or corporation to manufacture and sell, or offer for sale, any maple sugar, maple molasses or maple syrup that is in anywise adulterated with common sugar, beet sugar, glucose or any other foreign substance without distinctly marking, stamping or labeling the article or the package containing the same with the true and appropriate name of such article and the percentage in which common sugar, beet sugar, glucose or any other foreign substance enters into the composition of the same.

113. (5008) Sec. 2. Any person, dealer, firm, manufacturer or corporation who shall sell or offer for sale, and who shall falsely stamp or misrepresent or label any cans, jugs, jars, or packages containing maple molasses or maple syrup, and any person, dealer, firm, manufacturer or corporation who shall sell or offer for sale any maple sugar that is in anywise adulterated, who falsely misrepresents or labels or stamps the same, or knowingly permits such misrepresentation or false stamping or labeling, shall be deemed guilty of a misdemeanor and punished with a fine not less than fifty dollars, in case of vender, and in the case of manufacturers and those falsely or fraudulently stamping or labeling or misrepresenting.

senting such goods, shall be fined not less than five hundred dollars, nor more than one thousand dollars, and it shall be the duty of any board of health in this State, or food commissioner, should there be one, cognizant of any violation of this act to prosecute any person, dealer, firm, manufacturer, or corporation, which it has reason to believe has violated any of the provisions of this act, and after deducting the costs of trial and conviction the balance of fine recovered, one-half be placed in the township treasury wherein the conviction is made, the balance placed to the general fund of the county. Any (person) persons, dealer, firm, manufacturer or corporation who shall knowingly sell or offer for sale any cans, jugs, jars, or packages containing maple molasses, maple syrup, or maple sugar, that is in anywise adulterated, shall be deemed guilty of a misdemeanor and punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for a period not to exceed three months, or by both such fine and imprisonment, at the discretion of the court.

114. (5009) Sec. 3. Any person, dealer, firm, manufacturer, or corporation, who shall falsely stamp or misrepresent or label any cans, jugs, jars, or packages, containing maple molasses, or maple syrup, or maple sugar, that is in anywise adulterated, or knowingly permits such (misrepresentation) misrepresentations or false stamping or labeling, shall be deemed guilty of a misdemeanor, and punished by a fine, not more than five hundred dollars, or by imprisonment in the county jail for a period of not more than one year, or by both such fine or imprisonment, in the discretion of the court.

ICE CREAM.

(Act No. 70, Public Acts, 1909.)

AN ACT to regulate the manufacture and sale of ice cream within the limits of the State of Michigan.

115. Section 1. *The People of the State of Michigan enact*, No person, firm or corporation shall manufacture for sale, keep for sale, sell, barter, exchange or deal in ice cream which shall contain any substance other than milk, cream, eggs, sugar, and some neutral flavoring gelatin or vegetable gums or which contain other than the required amount of milk fat as hereinafter provided.

116. Sec. 2. No person, firm or corporation shall manufacture for sale, keep for sale, sell, barter, or deal in ice cream adulterated within the meaning of this act.

117. Sec. 3. Ice cream shall be deemed to be adulterated within the meaning of this act:

First, If it shall contain boric acid, formaldehyde, saccharin, or any other added substance or compound that is deleterious to health;

Second, If it shall contain salts of copper, iron oxide, ocrs or any coloring substance deleterious to health: Provided, That this paragraph shall not be construed to prohibit the use of harmless coloring matter in ice cream when not used for fraudulent purposes;

Third, If it shall contain any deleterious flavoring matter, or flavoring matter not true to name;

Fourth, If it be an imitation of, or offered for sale under the name of another article;

Fifth, If it contains less than ten per centum milk fat, except where fruit or nuts are used for the purpose of flavoring when it shall not contain less than eight per centum milk fat. Nothing in this act shall be construed to prohibit the use of not to exceed seven-tenths of one

per centum of pure gelatin, gum tragacanth or other vegetable gums.

[Am. by Act No. 224, P. A. 1913.]

118. Sec. 4. The standard of ice cream in this state and for the purpose of this act is hereby declared to be a frozen product made from milk, cream, eggs and sugar with or without a natural flavoring and the gums mentioned in the preceding section and contains not less than ten per cent of milk fat. Fruit ice cream is a frozen product made from milk, cream, eggs and sugar and sound, clean, mature fruits, and contains not less than eight per cent of milk fat. Nut ice cream is a frozen product made from milk, cream, eggs, sugar and sound, non-rancid nuts, and contains not less than eight per cent of milk fat.

[Am. by Act No. 224, P. A. 1913.]

119. Sec. 5. It shall not be lawful for any person, firm or corporation to sell, offer for sale, expose for sale, or have in possession with intent to sell, any ice cream in any container which is falsely labeled or branded as to the name of the manufacturer thereof or to misrepresent in any way the place of manufacture of ice cream or the manufacturer thereof.

120. Sec. 6. Each person, firm or corporation engaged in the manufacture of ice cream as a business within this State, after this act shall take effect, shall file with the Dairy and Food Commissioner an application for a license accompanied with a fee of five dollars, and upon receipt of such application the Dairy and Food Commissioner shall issue to the person, firm or corporation making such application a license to manufacture ice cream, as provided in this act, which license shall run for one year from the date of the application, and shall be renewed annually thereafter.

The money so collected by the Dairy and Food Commissioner shall be paid into the State treasury and be

used to help defray the expenses of the office of the Dairy and Food Commissioner in addition to the annual appropriation therefor: Provided, That this section shall not apply except in cities of more than three thousand inhabitants, by the last United States census, to any person, firm or corporation manufacturing and selling ice cream by the dish direct to the consumer.

121. Sec. 7. Any person, firm or corporation who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than ninety days, or by both such fine and imprisonment in the discretion of the court.

122. Sec. 8. The Dairy and Food Commissioner shall be charged with the enforcement of the provisions of this act. This act is ordered to take immediate effect.

MILL PRODUCTS.

(Act No. 208, Public Acts, 1909.)

AN ACT to establish uniform weights and measures of the various products of cereals in barrels or the fractional parts thereof when packed for sale or exposed for sale to firms or persons within this state, and to provide for the marking of the weight on packages of the products of such cereals.

123. Section 1. *The People of the State of Michigan enact*, When mill products of wheat, corn, rye or buckwheat, known as flour, grits, meal or compounds of the same are placed or packed in barrels, fractional parts of a barrel or sacks to be sold or billed to any person or persons within this State, the standard weight or measure of a barrel or the fractional part thereof shall be as follows, viz:

One hundred ninety-six pounds for a barrel;
Ninety-eight pounds for one-half barrel;
Forty-nine pounds for one-quarter barrel;
Twenty-four and one-half pounds for one-eighth barrel;

Twelve and one-fourth pounds for one-sixteenth barrel;
Six and one-eighth pounds for one thirty-second barrel.

The full and correct weights as herein established shall be placed in said barrel or fractional part thereof by the manufacturer, company, dealer, person or persons filling the same, and the weights as herein established shall be the legal weights in this State for such packages when they are bought or sold, offered or exposed for sale, or in possession with intent to sell, or sold and delivered, ordered or billed.

124. Sec. 2. No person or persons shall sell, offer or expose for sale in this State by the barrel, or by the fractional parts of a barrel as herein established, any of the mill products specified in section one hereof, unless the barrel or fractional part of such barrel shall contain the full weight of such mill product as is provided for in section one hereof.

125. Sec. 3. Before any package containing the mill products or compounds of such mill products specified in section one of this act shall be sold or offered or exposed for sale in this State, the number of pounds contained therein shall be plainly printed or stamped on the face label in plain English letters and numbers not less than one-half inch high. When such packages are sold as one-half, one-quarter, one-eighth, one-sixteenth or one-thirty-second of a barrel they shall be so marked in addition to the number of pounds marked thereon as herein provided.

126. Sec. 4. No manufacturer, company, dealer or person shall abstract any part of the mill products from the standard package or fractional parts named in section one, and sell such package as a barrel or fractional part of a barrel as defined in section one.

127. Sec. 5. Any manufacturer, company, dealer, per-

son or persons who shall knowingly sell, offer or expose for sale or for distribution in this State any package containing mill products of the cereals enumerated in section one which are stamped or labelled with a greater number of pounds than such package actually contains, or who shall put up or sell in this State any of the mill products of the above named cereals in a manner contrary to the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars and the costs of prosecution, or by imprisonment in the county jail or the Michigan Reformatory at Ionia for not less than ninety days nor more than one year or by both such fine and imprisonment in the discretion of the court for each and every offense: Provided, however, That nothing in this act shall be construed to cover or affect sales or shipments made to any manufacturer, company, dealer, person or persons outside of this State and not intended for sale or shipment back into this State.

128. Sec. 6. It shall be the duty of the Dairy and Food Commissioner to investigate all complaints of violations of this act, and to take all steps necessary to its enforcement. It shall be the duty of all prosecuting officers of this State to prosecute to completion all suits brought under the provisions of this act upon complaint of said commissioner or any person.

129. Sec. 7. This act shall take effect and be operative from and after January first, nineteen hundred ten.

LINSEED OR FLAXSEED OIL.

(Act No. 110, Public Acts, 1909.)

AN ACT to prevent the adulteration of linseed oil or flaxseed oil and to prevent fraud in the sale thereof and in the sale of compounds thereof, and to repeal all acts in conflict herewith.

130. Section 1. *The People of the State of Michigan enact*, No person, firm or corporation, by himself, his servant, or his agent, or as the servant or agent of any other person, firm or corporation, shall manufacture or mix for sale, sell, offer or expose for sale, or have in his possession with intent to sell in this State, under the name of raw linseed oil or raw flaxseed oil, any substance which is not wholly the product obtained from well cleaned flaxseed or linseed, and unless the aforesaid oil also fulfills the requirements of the nineteen hundred edition of the Pharmacopoeia of the United States, which follows:

1. Specific gravity 0.925 to 0.935 at 25 deg. C. (77 deg. F.) It does not congeal at temperatures above 20 deg. C (—4 deg. F.). It is soluble in about ten parts of absolute alcohol and in all proportions in ether, chloroform, petroleum, benzine, carbon disulphide and oil of turpentine. It should not more than slightly redden blue litmus paper, previously moistened with alcohol (limit of free acid). The oil should be completely saponifiable with alcoholic potassium hydroxide T. S. and the resulting soap should be completely soluble in water without leaving an oily residue, (absence of mineral oils and rosin oils). If 2 CC. of the oil be warmed and shaken in a test tube with an equal volume of glacial acetic acid, and if to this mixture, after cooling, one drop of sulphuric acid be added, a greenish color should be produced. (A violet color under these circumstances indicates the presence of rosin oils). Linseed oil saponified

by alcoholic potassium hydroxide T. S. should show a saponification value of from 187 to 195. If 0.15 CC. of linseed oil be dissolved in 10 CC. of chloroform in a 250 CC. flask at 25 CC. of a mixture of equal volume of alcoholic iodine T. S. and alcoholic mercuric chloride T. S. added, and if, after standing for sixteen hours, protected from the light, 20 CC. potassium iodide T. S. be introduced and the mixture diluted with 50 CC. of water, on titrating the excess of iodine with tenth normal sodium thiosulphate V. S. an iodine value of not less than 170 should be obtained. No person, firm or corporation, by himself, his servant or his agent, or as the servant or agent of any other person, firm or corporation, shall manufacture or mix for sale, sell, offer or expose for sale or have in his possession with intent to sell in this State, any substance as boiled linseed oil or as boiled flaxseed oil, unless the same shall have been prepared by heating raw linseed oil, as defined above: Provided, That if drier is used in said boiled linseed oil or boiled flaxseed oil, the same shall have been prepared by incorporating said drier with raw linseed oil, as defined above, at a temperature of not less than 225 deg. Fahrenheit, and furthermore contains not less than 96 per cent of linseed oil; and for the purpose of this act it shall also be deemed a violation thereof if said boiled linseed oil prepared either with or without drier does not conform to the following requirements: 1. Its specific gravity at 60 deg. Fahrenheit must be not less than 0.935 and not greater than 0.945; 2. Its saponification value (Koettstorfer figure) must not be less than 186; 3. Its iodine number (Huebl's method) must be not less than 160; 4. Its acid value must not exceed 10; 5. The volatile matter expelled at 212 deg. Fahrenheit must not exceed one-half of one per cent; 6. No mineral oil shall be present and the amount of unsaponifiable matter as determined by standard methods shall not exceed 2.5 per cent; 7. The film left after flowing the oil over glass and allowing it to drain in a vertical or nearly vertical position must dry free from tackiness in not to exceed

twenty hours, at a temperature of about 70 deg. Fahrenheit. Linseed oil or flaxseed oil which does not conform to the foregoing requirements shall be deemed to be adulterated within the meaning of this act.

131. Sec. 2. No person, firm or corporation, either by himself or another, shall sell, offer or expose for sale, or have in his possession with intent to sell in this State any linseed oil or flaxseed oil, except under its true name, and unless each barrel, keg or can of such oil has plainly and durably painted, stamped, stenciled, labeled or marked thereon the true name of such oil in ordinary bold-faced capital letters, not less than five lines pica in size, together with the name and address of the manufacturer, jobber or dealer: Provided, That if the contents of the package be less than twenty-five gallons, the type shall not be less than two lines pica in size. Proof that any person, firm or corporation has or had possession of any oil or compound which is adulterated or misbranded within the meaning of this act shall be prima facie evidence that the possession thereof is in violation of this act.

132. Sec. 3. Linseed oil compounds or flaxseed oil compounds designed to take the place of raw or boiled linseed oil or raw or boiled flaxseed oil as defined in section one of this act, whether sold, offered or exposed for sale under invented proprietary names or titles or not, shall bear conspicuously upon the containing vessel, in capital letters not less than five line pica in size, the word "Compound," followed immediately with the true distinctive names of the actual ingredients in the order of their greater preponderance, in the English language, in plain legible type of the same size, not less than two lines pica in size, in continuous list with no intervening matter of any kind, and shall also bear the name and address of the manufacturer, jobber or dealer. Any oil or compounds required to be branded by the provisions of this act and not complying with sections two and three shall be deemed to be misbranded within the meaning of this act.

133. Sec. 4. It is hereby made a duty of the State Dairy and Food Commissioner to enforce the provisions of this act.

134. Sec. 5. The State Dairy and Food Commissioner, his agents, assistants, inspectors, chemists or others appointed by him, shall have full rights of ingress and egress to the premises occupied by parties who manufacture, sell or deal in linseed oil or flaxseed oil, or linseed oil compounds or flaxseed oil compounds, and also shall have power and authority to open any tank, barrel, can or other vessel believed to contain such oil and inspect the contents thereof and to take therefrom samples for analysis. In case any sample so taken shall prove on analysis to be adulterated or misbranded in violation of the provisions of this act it shall be the duty of the State Dairy and Food Commissioner to proceed against the offender as herein provided. No person shall obstruct the State Dairy and Food Commissioner or any of his assistants by refusing entrance to any place which he desires to enter in the discharge of his official duty as provided in this act, nor shall any person refuse to deliver to him a sample of oil when same is requested and when the value thereof is tendered.

135. Sec. 6. Any person, firm or corporation convicted of violating any of the provisions of the foregoing act shall, for the first offense be punished by a fine in any sum not less than twenty-five dollars and not more than one hundred dollars or by imprisonment in the county jail not exceeding thirty days, or by both such fine and imprisonment in the discretion of the court; and for the second and each subsequent offense by a fine of not less than fifty dollars and not more than two hundred dollars or by imprisonment in the county jail not exceeding one year, or both in the discretion of the court; or the fine above may be sued for and recovered before any justice of the peace or any court of competent jurisdiction, in the county where the offense shall have been committed, at the instance of the State Dairy and Food Commissioner or any other person in the name of

the people of the State of Michigan as plaintiff and shall be recovered in an action of debt.

136. Sec. 7. All acts and parts of acts inconsistent with this act are hereby repealed.

DRUGS.

(Act No. 146, Public Acts, 1909.)

AN ACT to prohibit and prevent adulteration, misbranding, fraud and deception in the manufacture and sale of drugs and drug products in the State of Michigan, and to provide for the enforcement thereof.

137. Section 1. *The People of the State of Michigan enact*, No person shall within this State manufacture for sale, have in his possession with intent to sell, offer or expose for sale, or sell, any drug or drug product which is adulterated or misbranded within the meaning of this act.

138. Sec. 2. The term "drug" as used in this act shall include all medicines and preparations recognized in the United States Pharmacopoeia or National Formulary for internal or external use, and any substance or mixture of substances or device intended to be used for the cure, mitigation or prevention of disease of either man or other animals.

[Am. by Act No. 152, P. A. 1915.]

139. Sec. 3. An article shall be deemed to be adulterated within the meaning of this act:

First, If, when it is sold under or by a name recognized in the United States Pharmacopoeia or National Formulary, it differs from the standard of strength, quality or purity as determined by the test laid down in the United

States Pharmacopoeia or National Formulary official at the time of investigation: Provided, That no drug defined in the United States Pharmacopoeia or National Formulary shall be deemed to be adulterated under this provision if the standard of strength, quality or purity be plainly stated upon the principal label of the bottle, box or other container thereof, although the standard may differ from that determined by the test laid down in the United States Pharmacopoeia or National Formulary;

Second, If the strength or purity fall below the professed standard or quality under which it is sold.

[Am. by Act No. 152, P. A. 1915.]

140. Sec. 4. An article shall be deemed to be misbranded within the meaning of the act:

First, If it is an imitation of, or offered for sale under the name of another article;

Second, If the contents of the package as originally put up shall have been removed in whole or in part, and other contents shall have been placed in such package, or if the package fail to bear a statement on the label of the quantity or proportion of any alcohol, antipyrin, opium, morphine, codeine, heroin, cocaine, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate or acetanilide, or any derivative or preparation of any such substances, contained therein: Provided, That nothing herein shall be construed to apply to the dispensing of prescriptions written by regularly licensed practicing physicians, veterinary surgeons and dentists, and kept on file by the dispensing pharmacist, nor to such drugs as are recognized in the United States Pharmacopoeia and National Formulary, and which are sold under the name by which they are so recognized;

Third, If the package containing it or its label shall bear any statement, design or device regarding the ingredients, or the substances contained therein, which statement, design or device shall be false or misleading in any particular, and to any drug or drug product

which is falsely branded as to the state, territory or country in which it is manufactured or produced;

Fourth, If its package or label shall bear or contain any statement, design or device regarding the curative or therapeutic effect of such articles or any of the ingredients or substances contained therein, which is false and fraudulent.

[Am. by Act No. 152, P. A. 1915.]

141. Sec. 5. The president of the board of pharmacy, the president of the State Board of Health and the Dairy and Food Commissioner shall jointly make such rules and regulations as may be necessary for the enforcement of this act.

142. Sec. 6. It shall be the duty of the Dairy and Food Commissioner to investigate all complaints of violations of this act and take all steps necessary to its enforcement; and to this end he shall appoint two drug inspectors who shall be registered pharmacists, and one competent analyst which inspectors and analyst shall hold office at the pleasure of said commissioner, and until others are appointed; and the said Dairy and Food Commissioner or his deputy and the said drug inspectors or any of them shall in a lawful manner inquire into the drug products which are manufactured or sold or exposed or offered for sale in this State, and may in a lawful manner procure samples of the same for analysis; and the said Dairy and Food Commissioner, his deputy, or said drug inspectors or any of them, shall have power to enter into any factory, store, salesroom, drug store or laboratory or place where he has reason to believe drug products are made, stored, sold or offered for sale, and open any cask, jar, bottle or package containing, or supposed to contain any drug product, and take therefrom samples for analysis. The person making such inspection shall take such sample of such article or product in the presence of at least one witness, and he shall, in the presence of said witness mark or seal such sample

and shall tender at the time of taking to the manufacturer or vendor of such product or to the person having the custody of the same the value thereof and a statement in writing for the taking of such sample. The said Dairy and Food Commissioner shall direct said analyst to make due and careful examination of such sample and report to him the result of such analysis and if the same is found to be adulterated or misbranded within the provisions of this act it shall be the duty of said commissioner his deputy or any drug inspector assigned to such duty to make complaint against the manufacturer or vendor thereof in the proper county and furnish all evidence thereof to obtain a conviction of the offense charged, and in no case shall the Dairy and Food Commissioner or drug inspector making such complaint be required to furnish security for costs in any action instituted by him having for its object the enforcement of this act: Provided, Nothing herein contained shall be held to prohibit or prevent other inspectors or chemists connected with the office of the Dairy and Food Commissioner from performing any of the duties herein imposed upon the said drug inspectors and analyst, whenever in the opinion of said Dairy and Food Commissioner the work of his office can be expedited thereby.

143. Sec. 7. In construing and enforcing the provisions of this act, the act, omission or failure of any officer, agent or other person acting for or employed by any corporation, company, society or association within the scope of his employment or office, shall, in every case, be also deemed to be the act omission or failure of such corporation, company, society or association, as well as that of the person: Provided, That no dealer shall be prosecuted under the provisions of this act when he can establish a guaranty in accordance with the provisions of the national food and drug act, June thirtieth, nineteen hundred six, or a guaranty signed by the wholesaler, jobber, manufacturer or other parties residing in this State, from whom he purchased such article, to the effect

that the same is not adulterated nor misbranded within the meaning of this act. Said guaranty to afford protection shall contain the name and address of the party or parties making the sale of such article to such dealer, and in such case, if such guaranty was given in this State, said party or parties shall be amenable to the prosecution, fines and other penalties which would attach in due course to the dealer under the provisions of this act: Provided, however, That said guaranty shall not afford protection to the vendor in any case if said product is adulterated or misbranded within the meaning of this act, and if said vendor shall have been previously notified in writing by the Dairy and Food Commissioner to that effect: Provided further, That in no case shall the Dairy and Food Commissioner serve such notice upon any vendor of any such product until said Dairy and Food Commissioner shall have notified the manufacturer or jobber of any such product of the findings of the State Analyst with reference to such product; such notification to such manufacturer or jobber shall be in writing and shall be mailed ten days previous to any notice sent to any vendor in accordance with this section.

144. Sec. 8. Nothing in this act shall affect any drug product manufactured in this State for export to any foreign country or for sale in any other state, when such drug product is not adulterated or misbranded within the meaning of the laws of such foreign country or state; but if said article shall be in fact sold or offered for sale for use or consumption within this State, then such article shall not be exempt from the operation of any of the provisions of this act.

145. Sec. 9. It shall be the duty of each prosecuting attorney, when called upon by the said Dairy and Food Commissioner, or by any person by him authorized as aforesaid, to render any legal assistance in his power in proceedings under the provisions of this act or any subsequent act relative to the adulteration or misbranding of drug products.

146. Sec. 10. Whoever shall do any of the acts or

things prohibited, or wilfully neglect or refuse to do any of the acts or things enjoined by this act, or in any way violate any of its provisions, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than twenty-five nor more than five hundred dollars, or by imprisonment in the county jail for a period of not more than ninety days, or by both fine and imprisonment in the discretion of the court.

147. Sec. 11. The sum of six thousand dollars is hereby appropriated for the fiscal year ending June thirtieth, nineteen hundred eleven, and for each fiscal year thereafter there is hereby appropriated the sum of six thousand dollars. Out of the amounts appropriated by this act shall be paid all salaries and expenses provided for herein.

TURPENTINE.

(Act No. 175, Public Acts, 1911.)

AN ACT regulating the sale of turpentine and providing penalties for the violation of this act.

148. Section 1. *The People of the State of Michigan enact*, No person, firm or corporation shall manufacture, mix for sale, sell or offer for sale for other than medical purposes, under the name of turpentine or under a name composed of a part or parts of the word turpentine, or spirits of turpentine, any article which is not wholly distilled from resin, turpentine gum or scrape from pine trees and unmixed and unadulterated with oil, benzine or other foreign substance of any kind whatsoever, unless the package containing the same shall be stenciled or marked with letters not less than one inch square and one-fourth inch apart "adulterated turpentine," except turpentine produced from turpentine gum extracted wholly from pine wood, which turpentine is known as

“wood turpentine” must be stenciled or marked “wood turpentine” with letters not less than one inch square and one-fourth inch apart. When such wood turpentine is mixed and adulterated with oil, benzine or other foreign substance of any kind whatsoever, the container shall be stenciled or marked “adulterated wood turpentine” with letters not less than one inch square and one-fourth inch apart. When wood turpentine is mixed with turpentine distilled from resin, turpentine gum, or scrape from pine trees, in any quantity whatsoever, the container shall be stenciled or marked “wood turpentine” with letters not less than one inch square and one-fourth inch apart: Provided, That if the contents of the package be less than twenty-five gallons, the type shall not be less than two lines pica in size. Nothing herein contained shall be construed to prohibit the manufacture or sale of any compound or imitation providing the container shall be plainly marked and the purchaser notified as aforesaid.

[Am. by Act No. 372, P. A. 1913.]

149. Sec. 2. The Dairy and Food Commissioner of Michigan shall enforce the provisions of this chapter and the penal statutes relating thereto, and such commissioner, his assistants, experts, chemists and agents shall have access and ingress to the places of business, stores and buildings used for the sale of turpentine, and may open any package, can or jar or other receptacle containing any turpentine that may be manufactured, sold or offered for sale in violation of this statute. The inspectors, assistants or chemists appointed by such commissioner shall perform like duties and have like authority under this chapter and the penal statutes relating thereto as is provided by law in other cases. Such commissioner shall publish bulletins from time to time giving the results of the inspections and analyses with such information as he deems suitable.

150. Sec. 3. Whosoever violates any provision of law relating to the labeling, marking or stenciling of turpen-

tine or wood turpentine by manufacturers or distributors thereof, shall be fined not more than fifty dollars for the first offense, and for each subsequent offense shall be fined not less than fifty dollars nor more than one hundred dollars, or imprisoned not less than thirty days nor more than one hundred days or both.

BABCOCK TEST.

(Act No. 280, Public Acts, 1907.)

AN ACT to regulate the sampling and testing of milk and cream and the use of the Babcock test and to make the violation of any provision hereof a misdemeanor.

151. Section 1. *The People of the State of Michigan enact*, In taking samples of milk or cream from any milk can, cream can or any container of milk or cream, the contents of such milk can, cream can, or container of milk and cream shall first be thoroughly mixed either by stirring or otherwise and the sample shall be taken immediately after mixing, or by any other method which gives a representative average sample of the contents, and it is hereby made a misdemeanor to take samples by any method which does not give a representative average sample where milk or cream is bought or sold, and where the value of said milk or cream is determined by the butter fat contained in the same by the Babcock test.

152. Sec. 2. In the use of the Babcock test the term "standard Babcock testing glassware" shall apply to glassware complying with the following specifications:

(a) Standard Milk Test Bottles.

Graduation.—The total per cent graduation shall be eight per cent. The graduated portion of the neck shall have a length of not less than sixty-three five-tenths milli-

meters (two and one-half inches). The graduation shall represent whole per cent, five-tenths per cent, and tenths per cent. The tenth per cent graduations shall not be less than three millimeters in length; the five-tenths per cent graduations shall be one millimeter longer than the tenths per cent graduations, projecting one millimeter to the left; the whole per cent graduations shall extend at least one-half way around the neck to the right and projecting two millimeters to the left of the tenths per cent graduations. Each per cent graduation shall be numbered, the number being placed on the left of the scale. The arrow at any point of the scale shall not exceed one-tenth per cent.

Neck.—The neck shall be cylindrical and the cylindrical shape shall extend for at least nine millimeters below the lowest and above the highest graduation mark. The top of the neck shall be flared to a diameter of not less than ten millimeters.

Bulb.—The capacity of the bulb up to the junction of the neck shall not be less than forty-five cubic centimeters. The shape of the bulb may be either cylindrical or conical with the smallest diameter at the bottom. If cylindrical, the outside diameter shall be between thirty-four and thirty-six millimeters; if conical, the outside diameter of the base shall be between thirty-one and thirty-three millimeters, and the maximum diameter between thirty-five and thirty-seven millimeters.

The charge of the bottle shall be eighteen grams.

The total height of the bottle shall be between one hundred fifty and one hundred sixty-five millimeters (five and seven-eighths and six and one-half inches).

(b) Standard Cream Test Bottles.

Two types of bottles shall be accepted as standard cream test bottles, a fifty per cent nine gram short-neck bottle and a fifty per cent nine gram long-neck bottle.

Fifty per cent nine gram short-neck bottles. Graduation.—The total per cent graduation shall be fifty. The graduated portion of the neck shall have a length of not less than sixty-three five-tenths millimeters (two and one-

half inches). The graduation shall represent five per cent, one per cent and five-tenths per cent. The five per cent graduations shall extend at least one-half way around the neck of the bottle (to the right). The five per cent graduations shall have a length intermediate between the five per cent and the five-tenths per cent graduations. Each five per cent graduation shall be numbered, the number being placed on the left of the scale. The arrow at any point of the scale shall not exceed five-tenths per cent.

Neck.—The neck shall be cylindrical and the cylindrical shape shall extend at least nine millimeters below the lowest and nine millimeters above the highest graduation mark. The top of the neck shall be flared to a diameter of not less than ten millimeters.

Bulb.—The capacity of the bulb up to the junction of the neck shall not be less than forty-five cubic centimeters. The shape of the bulb may be either cylindrical or conical with the smallest diameter at the bottom. If cylindrical, the outside diameter of the base shall be between thirty-one and thirty-three millimeters and the maximum diameter between thirty-five and thirty-seven millimeters.

The charge of the bottle shall be nine grams. All bottles shall bear on top of the neck above the graduations, in plainly legible characters, a mark defining the weight of the charge to be used (nine grams).

The total height of the bottle shall be one hundred fifty and one hundred sixty-five millimeters (five and seven-eighths and six and one-half inches) same as standard milk test bottles.

Fifty per cent nine gram long-neck bottles.—The same specifications in every detail as specified for the fifty per cent nine gram short-neck bottle shall apply for the long-neck bottle with the exception, however, that the total height of this bottle shall be between two hundred ten and two hundred thirty-five millimeters (eight and one-half and eight and seven-eighths inches) and that the

total length of the graduation shall be not less than one hundred twenty millimeters.

The Standard Babcock Pipette.

Total length of pipette shall be not more than three hundred thirty millimeters (thirteen and one-fourth inches). Outside diameter of suction tube six to eight millimeters. Length of suction tube one hundred twenty millimeters. Outside diameter tube one hundred to one hundred twenty millimeters. Distance of graduation mark above bulb thirty to sixty millimeters. Nozzle straight. Delivery seventeen six-tenths cubic centimeters of water at twenty degrees C. in five to eight seconds.

All butter-fat and cream scales used for the purpose of determining the value or per cent of butter-fat content of milk or cream by the Babcock test shall be subject to the following specifications:

1. The scale shall be provided with a graduated face of at least ten divisions over which the pointer shall play.
2. The pointer must reach to the graduated divisions and shall terminate in a fine point to enable the readings to be made clearly and distinctly.

3. The clear interval between the divisions on the graduated face shall not be less than five one-hundredths inch.

4. All scales whose weight indications are changed by an amount greater than one-half the tolerance allowed, when set in any position on a surface making an angle of three degrees or approximately five per cent with the horizontal, shall be equipped with leveling screws and a device which will indicate when the scale is level: Provided, however, That the scale shall be rebalanced at zero each time its position is altered during the test.

5. The addition of one-half grain to the scale when loaded to capacity shall cause a movement of the pointer at least equal to one division on the graduated face.

6. The sensibility reciprocal and tolerance of cream test and butter-fat test scales shall be one half-grain (thirty milligrams). Every person, firm, company, association, corporation or agent thereof buying and paying

for milk or cream on the basis of the amount of butter-fat contained therein as determined by the Babcock test shall use standard Babcock test bottles, pipettes and accurate weights and scales as defined in this act.

[Am. by Act No. 266, 1915.]

153. Sec. 3. It shall be unlawful for the owner, manager, agent or any employee of a cheese factory, creamery, condensed milk factory or milk depot or other place where milk or cream is tested for quality or value to falsely manipulate or under-read or over-read the Babcock test, or make settlements on any other basis than the correct reading of the Babcock test or any other contrivance used for determining the quality or value of milk or cream where the value of said milk or cream is determined by the per cent of butter fat contained in the same or to make any false determination by the Babcock test or otherwise.

154. Sec. 4. Whoever shall violate any of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than ten dollars nor more than fifty dollars for each and every offence or be imprisoned in the county jail not less than ten days nor more than thirty days.

SAUSAGE.

(Act No. 151, Public Acts, 1913.)

AN ACT providing for the protection of the public health and the prevention of fraud and deception, by prohibiting the sale, the offering for sale or exposing for sale or the having in possession with intent to sell, of adulterated or deleterious sausage; defining sausage; and prescribing the penalty for the violation hereof.

155. Section 1. *The People of the State of Michigan enact*, It shall be unlawful for any person or persons, by

himself, herself or themselves, or by his, her or their agents, servants or employes, to sell, offer for sale, expose for sale, or have in possession with intent to sell, sausage that is adulterated within the meaning of this act. Sausage when used in this act shall be deemed to include Bologna, Wiene-wurst and Frankforts.

156. Sec. 2. For the purpose of this act, sausage or sausage meat shall be held to be a comminuted meat from neat cattle or swine, or a mixture of such meats, either fresh, salted, pickled or smoked, with added salt and spices, and with or without the addition of edible animal fat, blood and sugar, or subsequent smoking. It shall contain no larger amount of water than the meats from which it is prepared contain when in their fresh condition.

157. Sec. 3. For the purpose of this act, sausage shall be deemed to be adulterated:

First, If it contains added water in excess of the quantity required to bring the amount up to that which the meats from which it is prepared contain immediately after slaughter;

Second, If it contains any cereal or vegetable flour;

Third, If it contains any coal-tar dye, boric acid or borates, sulphites, sulphur dioxide, sulphurous acid, or any other substances injurious or deleterious to health;

Fourth, If it contains any diseased, contaminated, filthy or decomposed substance; or is manufactured, in whole or in part, from a diseased, contaminated, filthy or decomposed substance, or a substance produced, stored, transported or kept in a way or manner that would render the article diseased, contaminated or unwholesome; or if it is any product of a diseased animal, or the product of any animal which has died otherwise than by slaughter. Nothing in this act shall be construed as prohibiting the sale of sausage which when properly labeled shall conform to the following standard: Sausage shall not contain cereal in excess of two per cent. When cereal is added its presence shall be noted on the label or on the product. That water or ice shall not be

added to it except for the purpose of facilitating grinding, chopping and mixing, in which case the added water or ice shall not exceed three per cent except as provided in the following paragraph. Sausages of the class which are cooked or smoked, such as Frankfort style, Vienna style and Bologna style, may contain added water in excess of three per cent, but not in excess of amount sufficient to make the sausage palatable. When water in excess of three per cent is added to this class of sausage, the statement "Sausage, water and cereal" shall appear on the label or on the product, but when no cereal is added, the addition of water need not be stated.

158. Sec. 4. Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine of not less than one hundred dollars, nor more than two hundred dollars, or to undergo an imprisonment of not less than thirty days, nor more than sixty days, or both or either, in the discretion of the court.

159. Sec. 5. The dairy and food commissioner shall be charged with the enforcement of the provisions of this act.

WEIGHTS AND MEASURES.

(Act No. 168, Public Acts, 1913.)

AN ACT to provide for a state superintendent of weights and measures, state, county and city sealers and inspection of weights and measures, prescribing their powers and duties, providing penalties for fraud and deception in the use of false weights and measures and confiscation thereof, and repealing sections four thousand eight hundred eighty-two to four thousand eight hundred ninety-seven inclusive of the Compiled Laws of eighteen hundred ninety-seven.

160. Section 1. *The People of the State of Michigan enact*, The weights and measures received from the

United States under a resolution of congress approved June fourteen, eighteen hundred thirty-six and such new weights and measures as shall be received from the United States as standard weights and measures in addition thereto or in renewal thereof, and such as shall be supplied by the state in conformity therewith and certified by the national bureau of standards, shall be the state standards, by which all county and municipal standards of weights and measures shall be tried, proved and sealed.

161. Sec. 2. The state dairy and food commissioner by virtue of his office shall be state superintendent of weights and measures during his term of office. His deputy shall be deputy superintendent of weights and measures and all inspectors appointed by the dairy and food commissioner shall be state inspectors and sealers of weights and measures.

162. Sec. 3. The superintendent of weights and measures shall take charge of the standards adopted by this article as the standards of the state, and cause them to be kept in a safe and suitable place in the office of the superintendent from which they shall not be removed except for repairs or for certification and he shall take all other necessary precautions for their safe keeping. He shall maintain the state standards in good order and shall submit them at least once in ten years to the national bureau of standards for certification. He shall at least once in five years try and prove by the state standards all weights, measures and other apparatus which may belong to any county or city, and shall seal such when found to be accurate stamping on them the letter "C" and the last two figures of the year with seals which he shall have and keep for that purpose. He shall have and keep a general supervision of the weights, measures and weighing and measuring devices offered for sale, sold, or in use in the state. He shall, upon the written request of any citizen, firm, corporation or educational institution in the state test or calibrate weights, measures, weighing or measuring devices, and instruments or

apparatus used as standards in the state. He, or his deputy, or inspectors, by his direction, shall at least once annually test all scales, weights, and measures used in checking the receipts and disbursements of supplies in every institution for the maintenance of which moneys are appropriated by the legislature, and he shall report in writing his finding to the supervisory board and to the executive officer of the institution concerned, and at the request of such board or executive officer the superintendent of weights and measures shall appoint in writing one or more employes then in the actual service of each institution, who shall act as special deputies without extra compensation for the purpose of checking the receipts and disbursements of supplies. He shall keep a complete record of standards, balances and other apparatus belonging to the state and take a receipt for same from his successor in office. He shall annually on the first day of July make to the governor a report of the work done by his office. The state superintendent or his deputy, or inspectors, at his direction, shall inspect all standards and apparatus used by the counties and cities at least once in five years and shall keep a record of the same. He, or his deputy, or inspectors, at his direction shall at least once in five years visit the various cities and counties of the state in order to inspect the work of the local sealers, and in the performance of such duties, he may inspect the weights, measures, balances, or any other weighing appliance of any citizen, firm, or corporation, and shall have the same power as the local sealer of weights and measures. The superintendent shall issue from time to time, regulations for the guidance of city and county sealers, and the said regulations shall govern the procedure to be followed by the aforesaid officers in the discharge of their duties.

163. Sec. 4. The board of supervisors of each county and the commissioner or common council of each city who may in their discretion appoint a sealer under this act, shall procure at the expense of the county or city, and shall keep at all times, a complete set of weights

and measures and other apparatus of such material and construction as said superintendent of weights and measures may direct. All such weights, measures, and other apparatus having been tried and accurately proven by him, shall be sealed and certified to by the state superintendent as hereinbefore provided; and shall be then deposited with and preserved by the county or city sealer as public standards for such county or city.

164. Sec. 5. The board of supervisors of each county may in its discretion appoint a county sealer of weights and measures in each county for a term of two years. He shall be paid a salary to be determined by said board, and no fee shall be charged by him or by the county for the inspection, testing, or sealing of weights, measures, or weighing or measuring devices; where not otherwise provided by law, the county sealer shall have the power within his county, and the state superintendent, his deputies and inspectors, within the state, to inspect, test, try, and ascertain if they are correct, all weights, scales, beams, measures of every kind, instruments or mechanical devices for measuring and tools, appliances and accessories connected with any and all such instruments or measures kept, offered, or exposed for sale, sold or used or employed within the county by any proprietor, agent, lessee, or employe in proving the size, quantity, extent, area, or measurement of quantities, things, produce, articles for distribution or consumption offered or submitted by such person or persons for sale, hire, or award; and they shall have the power to and shall from time to time weigh or measure packages or amounts of commodities of whatsoever kind kept for the purpose of sale, offered for sale, or sold or in the process of delivery, in order to determine whether the same contains the amount represented, and whether they be offered for sale or sold in a manner in accordance with law. The county sealer shall at least once each year, and as much oftener as he may deem necessary, see that the weights, measures, and all apparatus

used in the county are correct. The county and state inspectors may for the purpose above mentioned and in the general performance of their official duties enter or go in upon, and without formal warrant, any stand, place, building, or premises, or stop any vendor, peddler, junk dealer, coal wagon, ice wagon, delivery wagon, or any dealer whatsoever and require him, if necessary, to proceed to some place which the sealer may specify, for the purpose of making the proper tests. Whenever the county sealer or state inspectors find a violation of the statute relating to weights and measures, they shall cause the violator to be prosecuted. Whenever any sealer or inspector compares weights, measures, or weighing and measuring instruments and finds that they correspond, or causes them to correspond, with the standards in his possession, he shall seal or mark such weights, measures, or weighing or measuring instruments with appropriate devices to be approved by the state superintendent of weights and measures. The county sealer shall keep a complete record of all of his official acts and shall make an annual report to the board of supervisors and an annual report duly sworn to on the first day of July to the state superintendent of weights and measures on blanks to be furnished by the superintendent. The county sealer of weights and measures shall forthwith on his appointment give a bond in the penal sum of one thousand dollars, with sureties to be approved by the appointing power for the faithful performance of the duties of his office: Provided, however, That nothing in the above shall be construed to prevent two or more counties from combining the whole or any part of their districts as may be agreed upon by the board of supervisors with one set of standards and one sealer, upon the written consent of the state superintendent of weights and measures. A county sealer appointed in pursuance of such an agreement for such combination, shall, subject to the terms of his appointment, have the same authority, jurisdiction, and duties

as if he had been appointed by each of the authorities who are party to the agreement.

165. Sec. 6. Any incorporated city in this state may in its discretion appoint a city sealer of weights and measures under this act. He shall be appointed by the mayor, by and with the advice and consent of the common council. He shall perform in said city the duties and have like powers as the county sealer in the county. In those cities in which no sealer is appointed as above, the county sealer of the county, if there be one, shall perform in said cities the duties and have like powers as in the county: Provided, however, That nothing in the above shall be construed to prevent any county and a city situated therein from combining the whole or any part of their districts as may be agreed upon with one sealer, subject to the written approval of the state superintendent of weights and measures. A sealer appointed in pursuance of an agreement for such combination shall, subject to the terms of his appointment, have the same authority, jurisdiction, and duties as if he had been appointed by each of the authorities who are parties to the agreement.

166. Sec. 7. Any person who by himself or by his servant or agent or as the servant or the agent of another shall offer or expose for sale, sell, or use or retain in his possession, a false weight or measure or weighing or measuring device or any weight or measure or weighing or measuring device which has not been sealed by the sealer of weights and measures within five years, in the buying or selling of any commodity or thing or for hire or reward; or who shall dispose of any condemned weight, measure or weighing or measuring device contrary to law or remove any tags placed thereon by the sealer of weights and measures; or any person who by himself or by his servant or agent, or as the servant or agent of another, shall knowingly sell or offer or expose for sale less than the quantity he represents, or sell or offer or expose for sale any such commodity in a manner contrary to law; or any person who by him-

self or by his servant or agent, or as the servant or agent of another, shall sell or offer for sale or have in his possession for the purpose of selling any device or instrument to be used to, or calculated, to falsify any weight or measure, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than twenty dollars nor more than one hundred dollars or by imprisonment for not more than three months or by both such fine and imprisonment upon first conviction; but upon a second or subsequent conviction he shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars or by imprisonment in the county jail for not more than one year or by both such fine and imprisonment.

167. Sec. 8. The superintendent of weights and measures, his deputy, inspectors, and the county and city sealers of weights and measures are hereby made special policemen, and are authorized to seize, for use as evidence and without formal warrant any false or unsealed weight, measure or weighing or measuring device or package or amounts of commodities, found to be used, retained or offered or exposed for sale or sold in violation of law.

168. Sec. 9. Any person who shall hinder or obstruct in any way, the superintendent of weights and measures, his deputy, or inspectors, or any county or city sealer, in the performance of his official duties shall be guilty of a misdemeanor, and shall be punished upon conviction thereof, in any court of competent jurisdiction, by a fine of not less than two nor more than two hundred dollars, or by imprisonment in the county jail for not more than ninety days or by both such fine and imprisonment.

169. Sec. 10. Any person who shall impersonate in any way the superintendent of weights and measures, his deputies, inspectors, or any county or city sealer, by use of his seal or otherwise, shall be guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars,

or by imprisonment in the county jail for not more than ninety days or by both such fine and imprisonment.

170. Sec. 11. Sections four thousand eight hundred eighty-two, four thousand eight hundred eighty-three, four thousand eight hundred eighty-four, four thousand eight hundred eighty-five, four thousand eight hundred eighty-six, four thousand eight hundred eighty-seven, four thousand eight hundred eighty-eight, four thousand eight hundred eighty-nine, four thousand eight hundred ninety, four thousand eight hundred ninety-one, four thousand eight hundred ninety-two, four thousand eight hundred ninety-three, four thousand eight hundred ninety-four, four thousand eight hundred ninety-five, four thousand eight hundred ninety-six and four thousand eight hundred ninety-seven, of the Compiled Laws of eighteen hundred ninety-seven, relative to weights and measures, are hereby repealed.

AN ACT to provide for the weight per bushel, of certain grain, dried fruit, coal, vegetables and products.

171. (C. L. 4900) Section 1. *The People of the State Michigan enact*, That whenever wheat, rye, shelled corn, corn on the cob, corn meal, oats, buckwheat, beans, clover seed, timothy seed, flax seed, hemp seed, millet seed, blue grass seed, red top seed, barley, dried apples, dried peaches, potatoes, potatoes (sweet), onions, turnips, peas, cranberries, dried plums, castor beans, salt, mineral coal, Hungarian grass seed, orchard grass seed, osage orange seed, shall be sold by the bushel, and no special agreement as to the measure or weight thereof shall be made by the parties, the measure thereof shall be ascertained by weight and shall be computed as follows, viz.:

Sixty pounds for a bushel of wheat;

Fifty-six pounds for a bushel of rye;

Fifty-six pounds for a bushel of shelled corn;
Seventy pounds for a bushel of corn on the cob;
Fifty pounds for a bushel of corn meal;
Thirty-two pounds for a bushel of oats;
Forty-eight pounds for a bushel of buckwheat;
Sixty pounds for a bushel of beans;
Sixty pounds for a bushel of clover seed;
Forty-five pounds for a bushel of timothy seed;
Fifty-six pounds for a bushel of flax seed;
Forty-four pounds for a bushel of hemp seed;
Fifty pounds for a bushel of millet or Hungarian
grass seed;
Fourteen pounds for a bushel of blue grass seed;
Fourteen pounds for a bushel of red top seed;
Forty-eight pounds for a bushel of barley;
Twenty-two pounds for a bushel of dried apples;
Twenty-eight pounds for a bushel of dried peaches;
Sixty pounds for a bushel of potatoes;
Fifty-six pounds for a bushel of sweet potatoes;
Fifty-four pounds for a bushel of onions;
Fifty-eight pounds for a bushel of turnips;
Sixty pounds for a bushel of peas;
Forty pounds for a bushel of cranberries;
Twenty-eight pounds for a bushel of dried plums;
Forty-six pounds for a bushel of castor beans;
Fifty-six pounds for a bushel of Michigan salt;
Eighty pounds for a bushel of mineral coal;
Fourteen pounds for a bushel of orchard grass seed;
Thirty-three pounds for a bushel of osage orange seed.

UNLAWFUL DISCRIMINATION.

(Act No. 103, Public Acts, 1913.)

AN ACT to prevent unlawful discrimination in the purchase of poultry, eggs, milk, cream and butter-fat, and to provide a punishment for the same.

172. Section 1. *The People of the State of Michigan enact*, Any person, firm, copartnership or corporation engaged in the business of buying poultry, eggs, milk, cream or butter-fat for the purpose of manufacture, who shall with the intention of creating a monopoly or destroying the business of a competitor, discriminate between different sections, localities, communities or cities of this State by purchasing such commodity at a higher price or rate in one locality than is paid for the same commodity by said person, firm, copartnership or corporation in any other locality, after making due allowance for the difference, if any, in the actual cost of transportation from the locality of purchase to the locality of manufacture, shall be deemed guilty of unfair discrimination, and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars or by imprisonment in the county jail not to exceed six months.

COMMISSION MERCHANTS.

(Act No. 184, Public Acts, 1913.)

AN ACT to regulate the business of selling farm products on commission, providing all commission merchants dealing in farm products shall be licensed, to provide against and punish fraud and deception in the sale of farm products on commission, and defining the duties of the State dairy and food commissioner relative thereto.

173. Section 1. *The People of the State of Michigan enact*, As used in this article:

1. The term "commission merchant" shall include every person, firm, association and corporation, licensed under this article to receive, sell or offer for sale on commission within this State any kind of farm produce.

2. The term "farm produce" shall include all agricultural, horticultural, vegetable and fruit products of the soil, and meats, poultry, eggs, dairy products, nuts and honey, but shall not include timber products.

174. Sec. 2. On and after October first, nineteen hundred thirteen, no person, firm, association or corporation, whose principal place of business shall be located in any city in this State, shall receive, sell or offer for sale on commission within this State any kind of farm produce, without a license as provided in this article. Every person, firm, association and corporation in this State receiving farm produce for sale on commission shall annually on or before October first, file an application with the State dairy and food commissioner for a license to do a commission business in farm produce. Such application shall state the kind or kinds of produce which the applicant proposes to handle, the full name of the person or corporation applying for such license, and if the applicant be a firm or association, the full name of each member of the firm or association, the city and street number at which the business is to be conducted, and such other facts as the State dairy and food com-

missioner shall prescribe. Such applicant shall further satisfy the State dairy and food commissioner of his or its character, responsibility and good faith in seeking to carry on a commission business. The State dairy and food commissioner shall thereupon issue to such applicant, on payment of fifteen dollars, in cities of less than twenty thousand population, and twenty-five dollars, in cities of more than twenty thousand population, a license entitling the applicant to conduct the business of receiving and selling farm produce on commission at the place named in the application until the tenth day of October next following. Such license shall not be issued, however, to any applicant if during the preceding year a complaint from any consignor of farm produce for sale on commission shall have been filed with the State dairy and food commissioner against such applicant for any of the grounds specified in section four hereof, and such complaint shall have been established as true and just to the satisfaction of the commissioner after such complaint shall have been investigated by the commissioner in the manner provided by section three of this act.

175. Sec. 3. The commissioner and his assistants shall have power to investigate, upon the complaint of an interested person, or of his own motion, the record of any person, firm or corporation applying for a license, or any transaction involving the solicitation, receipt, transportation, sale or attempted sale of farm produce on a commission basis, including the making of charges in selling, carting, or other services, the failure to make proper and true accounts and settlements at prompt and regular intervals, the making of false statements as to condition, quality or quantity of goods received or while in storage, the making of false statements as to market conditions, or the failure to make payment for goods received or other alleged injurious transactions; and for such purpose may examine the ledgers, books of account, memoranda or other documents of any commission merchant and may take testimony therein under

oath; but information relating to the general business of any such person, contained in such investigation and not relating to the immediate purpose thereof shall be deemed of a confidential nature by the commissioner, his assistants and employes. When a complaint is filed with the commissioner, he shall attempt to secure an explanation or adjustment; failing this, within ten days he shall cause a copy thereof, together with a notice of a time and place for a hearing on such complaint, to be served personally, or by mail, upon such commission merchants. If served by mail such complaint and notice shall be directed to such commission merchant at his place of business and the postage prepaid thereon. Such service shall be made at least seven days before the hearing. At the time and place appointed for such hearing, which shall be within the county where the commission merchant is licensed to do business, the commissioner or his assistants shall hear the parties to such complaint, shall have power to administer an oath, and shall enter in the office of the State dairy and food commissioner a decision either dismissing such complaint or specifying the fact which he deemed established on such hearing.

176. Sec. 4. The State dairy and food commissioner may decline to grant a license or may revoke a license already granted, where he is satisfied of the existence of the following cases or either of them:

1. Where false charges have been imposed for handling or services, or charges other than as by a schedule agreed on by the parties, or other than those customary in the trade;

2. Where there has been a failure to account promptly and properly or to make settlements with intent to defraud;

3. Where there have been false statements as to condition, quality or quantity of goods received or held for sale on commission;

4. Where there have been false or misleading statements as to market condition with intent to deceive;

5. Where there have been combinations to fix prices below the market level;

6. Where there has been a continual course of dealings of such nature as to satisfy the commissioner of inability of the commission merchant to properly conduct the business, or of an intent to deceive or defraud customers;

7. Where the commission merchant directly or indirectly purchases the goods for his own account without prior authority therefor, or without notifying the consignor thereof.

177. Sec. 5. The action of the commissioner in refusing to grant a license, or in revoking a license granted under this act, shall be subject to review by a writ of certiorari, and if such proceedings are begun; until the final determination of certiorari proceedings and all appeals therefrom, the license of such commission merchant shall be deemed to be in full force and effect, or if such license shall have been refused, such commission merchant shall not be deemed to have violated the provisions of this act, prohibiting the transaction of such business without a license, provided the fee for such license shall have been paid.

178. Sec. 6. The dairy and food commissioner shall publish in pamphlet form as often as he thinks is necessary, a list of all the licensed commission merchants.

179. Sec. 7. The funds received for the license issued under section two of this act shall be paid into the State treasury for the use and benefit of the State dairy and food department.

180. Sec. 8. If any shipper of farm produce to a commission merchant be dissatisfied with any statement relative to the sale of such shipment, he may apply to the State dairy and food commissioner, in writing, within sixty days of making such shipment, for an investigation. The State dairy and food commissioner shall treat such application as a complaint, and shall cause a full investigation of the transaction complained of to be

made either by himself, or one of his assistants in the manner provided by section five of this act.

181. Sec. 9. Any person, who being a commission merchant in farm produce, shall (a) impose false charges for handling or services in connection with food products, or (b) fail to account for such food products, promptly and properly and to make settlements therefor with intent to defraud, or (c) shall make false or misleading statement or statements as to the market conditions with intent to deceive, or (d) enter into any combination to fix prices below market level, (e) directly or indirectly purchase for his or its own account, goods received by him upon consignment without prior authority therefor from the consignor, or shall fail to promptly notify the consignor of such purchase on his own account, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars, nor more than five hundred dollars, and the cost of prosecution, or by imprisonment in the county jail or State house of correction and reformatory at Ionia, for not less than six months nor more than three years, or by such fine and imprisonment in the discretion of the court in each and every offense.

182. Sec. 10. Nothing in this act shall apply to retail dealers, real estate dealers or auctioneers selling farm products on commission.

183. Sec. 11. Any commission merchant of farm produce, as defined in sections one and two of this act, who shall fail to take out a license as required by this act, shall be deemed guilty of a misdemeanor, and for each and every offense of selling farm produce on commission without such license, shall be punished by a fine of not more than one hundred dollars, and the costs of prosecution, or by imprisonment in the county jail for not more than thirty days, or both in the discretion of the court, and the fact that any person advertises and holds himself out as a commission merchant of farm produce, shall be

prima facie evidence of the fact that he is a commission merchant of farm products as defined by this act.

[Added by Act No. 18, P. A. 1915.]

UNWHOLESOME VEAL.

(Act No. 340, Public Acts, 1913.)

AN ACT to prevent and punish the sale of immature and unwholesome calves and veal.

184. Section 1. *The People of the State of Michigan enact*, No person shall for the purpose of selling, kill a calf less than four weeks old, and no person shall sell the meat of any such calf or have the same in his possession with intent to sell the same either by himself, his agents, or servants.

185. Sec. 2. Whoever shall do any of the acts or things prohibited by this act, or in any way violate any of its provisions, shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, and the costs of the prosecution, or by imprisonment in the county jail not more than ninety days, or by both such fine and imprisonment in the discretion of the court.

186. Sec. 3. This act is immediately necessary for the public health.

UNWHOLESOME FOOD FOR ANIMALS.

(Act No. 179, Public Acts, 1913.)

AN ACT to regulate, prevent and punish the feeding of the flesh of old, decrepit, infirm, sick or diseased animals and unwholesome offal to animals or fowls, and provide a penalty for the violation thereof.

187. Section 1. *The People of the State of Michigan enact*, No person shall feed to animals or fowls the flesh of an animal which has become old, decrepit, infirm or sick, or which has died from such cause, or offal or flesh that is putrid or unwholesome.

188. Sec. 2. Whoever shall do any of the acts or things prohibited by this act, or in any way violates any of its provisions, shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not more than one hundred dollars and the costs of prosecution, or by imprisonment in the county jail not more than ninety days, or by both such fine and imprisonment in the discretion of the court.

189. Sec. 3. This act is immediately necessary for the preservation of the public health.

CERTIFIED MILK.

(Act No. 248, Public Acts, 1911.)

AN ACT providing for the incorporation of medical milk commissions, and certification of milk produced under their supervision.

190. Section 1. *The People of the State of Michigan enact*, Authority is hereby given the board of health of

any city, village or township in this State, so constituted as to have in its membership two or more physicians duly authorized to practice medicine under the laws of this State, to appoint five physicians duly authorized to practice medicine under the laws of this State a medical milk commission for the purpose of supervising the production, transportation and delivery of milk, which it is intended to use for infant feeding, sick-room clinical purposes in said city, village or township. In cities, villages or townships not having a board of health so constituted as above stated, the State Board of Health may make such appointment. All members of such milk commission shall have and possess all the powers and immunities provided by this act or any other act relating to the appointees of such board of health, while performing their duties as such appointees. One member of such commission shall be appointed and hold office from the time of such appointment until the end of the thirty-first of December, nineteen hundred eleven, one shall be appointed and hold office until the end of the thirty-first of December nineteen hundred twelve, one shall be appointed and hold office until the end of the thirty-first of December, nineteen hundred thirteen, and one shall be appointed and hold office until the end of the thirty-first of December, nineteen hundred fourteen, one shall be appointed and hold office until the end of the thirty-first of December, nineteen hundred fifteen, and until their several successors are appointed and qualified. The term of office of each member of the commission, after the termination of the aforesaid terms shall be five years, and on the expiration of any term a new appointment shall be made in the same manner above prescribed. No more than one milk commission shall be appointed for any one city, village, or township. Any and all members of such commission may be removed at any time by the board which appointed them. Such medical milk commission shall make and file a certificate in writing in the manner hereinafter mentioned.

191. Sec. 2. Such certificates shall set forth:

The name of such association, which shall be as hereinafter designated;

The purpose for which the association shall be formed;

The names and residences of the medical directors who shall manage the affairs of the association for the first year of its existence;

The city, village or township in this State where such association shall operate.

[Am. by Act No. 196, P. A., 1913.]

192. Sec. 3. Such certificate shall be executed in triplicate and acknowledged before some person within this State authorized to take the acknowledgment of deeds, and one copy thereof shall be filed in the office of the clerk of the county where the purposes of such association are to be carried out and one copy shall be filed in the office of the Secretary of State; said certificate or copy thereof duly certified by the said clerk or Secretary of State shall be evidence in all courts or places.

193. Sec. 4. The name of such association shall be "The Medical Milk Commission of the..... (stating whether city, village or township) of..... (designating the name of city, village or township) (designating the name of the county) County of Michigan."

[Am. by Act No. 196, P. A., 1913.]

194. Sec. 5. Such medical directors shall have the power from time to time to make, alter and amend by-laws not inconsistent with the constitution and laws of the United States and of this State, and to appoint such agents and officers as shall in their judgment tend to promote or advance any purpose or purposes of such commission, and to prescribe their respective duties; and for the regulating of the conditions under which milk shall be produced by any dairyman or dairymen under contract with such commission.

195. Sec. 6. No medical director of any association organized under this act shall receive, directly or indirectly, from such association or dairyman, or dairymen producing milk under agreement with such commission, any salary or emolument or any compensation of any kind or character for any services rendered under the provisions of this act, and any medical director who shall receive any salary, emolument or any compensation of any kind or character for such services, shall be liable to a penalty of one hundred dollars to be recovered in an action of debt by the association of which he is a member, and in addition thereto shall be removed from his office as a member of said association, and thereafter disqualified from becoming a member of any association incorporated under the provisions of this act.

196. Sec. 7. Every such association shall have the power to enter into agreement in writing with any dairyman or dairymen for the production of milk under the supervision of such association for the purposes enumerated in section one hereof, and to prescribe in such agreement the conditions under which such milk shall be produced, which conditions however, shall not be below the standards of purity and quality for certified milk as fixed by the American association of medical milk commissions, and the standards for milk now fixed or that may hereafter be fixed by the Board of Health of the state of Michigan. In any contract entered into by any such commission with any dairyman or dairymen, it may be provided that such medical milk commission may designate any analyst, chemist, bacteriologist, veterinarians, medical inspectors or other persons who in its judgment may be necessary for the proper carrying out of the purposes of such commission for employment of such dairyman or dairymen, and to prescribe and define their powers and duties, and that such persons so employed by such dairyman or dairymen may be discharged from employment whenever such medical milk commission may request such discharge or removal in writing.

197. Sec. 8. All containers of any kind or character used in the carrying or distribution of milk produced by any dairyman or dairymen under contract with any medical milk commission shall have attached thereto or placed thereon a certificate or seal bearing the name of the medical milk commission with which such dairyman or dairymen producing such milk shall be under contract, which certificate shall have printed, stamped or written thereon the day or date of the production of the milk contained in any such container and the words "certified milk" in plain and legible form.

198. Sec. 9. The work and methods of any milk commission organized under this act and of the dairies of which milk is produced under contract with any such commission, shall at all times be subject to investigation and scrutiny by the local board of health and the Board of Health of the State of Michigan. The secretary of said State Board of Health and the local health officer shall be ex-officio members of every milk commission organized under this act.

199. Sec. 10. No person, firm or corporation shall sell or exchange or offer or expose for sale or exchange in any city, village or township as and for certified milk, any milk which is not certified by the medical milk commission of that city, village or township, and which is not produced in conformity with the methods and regulations for the production of certified milk from time to time adopted by the American association of medical milk commissions, and which is below the standards of purity and quality for certified milk as fixed by the American association of medical milk commissions.

[Am. by Act No. 196, P. A., 1913.]

200. Sec. 11. Whoever shall by himself, servant or agent sell, exchange or deliver or have in his custody with intent to sell, exchange or deliver, or offer or expose for sale in any city, village or township as certified milk, any milk which has not been certified by the medical milk commission of that city, village or township, or

shall violate any of the provisions of this act, shall upon conviction thereof be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail not more than ninety days, or by both such fine and imprisonment in the discretion of the court.

[Am. by Act No. 196, P. A., 1913.]

201. Sec. 12. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

OLEOMARGARINE IN PUBLIC INSTITUTIONS.

(Act No. 45, Public Acts of 1891.)

AN ACT to prohibit the use of oleomargarine, butterine, or any other substitute for butter in any of the public institutions of this State, and to provide the punishment therefor.

202. Section 1. *The People of the State of Michigan enact*, That the use of oleomargarine, butterine or any other substitute for butter, in any of the public institutions of this state, be and the same is hereby prohibited, except in the penal institutions of the state.

[Am. by Act 233, P. A., 1913.]

203. Sec. 2. Any warden, superintendent or other officer of any such institution, who shall knowingly violate the provisions of section one of this act, or shall knowingly permit the same to be violated shall be deemed guilty of a misdemeanor and every violation shall constitute a separate offense and on conviction thereof shall be punished by a fine of not less than

twenty-five, nor more than one hundred dollars, together with costs of prosecution, or by imprisonment in the county jail of the county in which said institution is situated, not exceeding ninety days, or both such fine and imprisonment, at the discretion of the court.

MILK BOTTLES.

(Act No. 257, Public Acts of 1911.)

AN ACT to prohibit drivers of milk wagons and unauthorized persons from opening milk bottles, or in any way interfering with or molesting the caps or covers thereof after such bottles shall have been closed at the creamery, and during and after the process of delivery to patrons.

204. Section 1. *The People of the State of Michigan enact*, From and after the date on which this act takes effect, it shall be unlawful for any driver of any milk wagon, or any distributor of milk, or any person whatsoever, except legally authorized milk inspectors and persons to whom such milk is delivered, to open milk bottles or in any way interfere with or molest the caps or covers of the same after such milk bottles shall have been closed at the creamery, or during the process of the delivery of said milk or, after said milk shall have been delivered in due course of business and in the ordinary manner.

205. Sec. 2. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof in a court of competent jurisdiction shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than ninety days, or by both such fine and imprisonment in the discretion of the court.

FRUITS AND VEGETABLES.

(Act No. 207, Public Acts, 1913.)

AN ACT to prevent fraud and deception in the sale of Michigan grown fresh fruits and vegetables, and to provide penalties for violations of this act.

206. Section 1. *The People of the State of Michigan enact*, In this act, unless the contents otherwise requires, the term "closed package" shall be construed to mean a barrel, box, basket, carrier or crate, of which all the contents cannot readily be seen or inspected when such package is prepared for market. Fresh fruits or vegetables in baskets or boxes, packed in closed or open crates, and packages covered with burlap, tarlatan or slat covers shall come within the meaning of the term "closed package." None of the provisions of this act shall apply to other than Michigan grown fruits and vegetables.

207. Sec. 2. Every person who, by himself or by his agent or employe, packs or repacks fresh fruits or vegetables in closed packages intended for sale in the open market, shall cause the same to be marked in a plain and indelible manner, as follows:

First, With his full name and address, including the name of the state where such fresh fruits and vegetables are packed, before such fresh fruits or vegetables are removed from the premises of the packer or dealer;

Second, The name and address of such packer or dealer shall be printed or stamped on said closed packages in letters not less than one-quarter inch in height.

208. Sec. 3. No person shall sell or offer, expose or have in his possession for sale, in the open market, any fresh fruits or vegetables packed in a closed package and intended for sale, unless such package is marked as is required by this act.

209. Sec. 4. No person shall sell or offer, expose or

have in his possession for sale, any fresh fruits or vegetables packed in a closed or open package, upon which package is marked any designation which represents such fruit as "No. 1," "Finest," "Best," "Extra Good," "Fancy," "Selected," "Prime," "Standard," or other superior grade or quality, unless such fruit or vegetables consist of well grown specimens, sound, of nearly uniform size, normal shape, good color, for the variety, and not less than ninety per cent free from injurious or disfiguring bruises, diseases, insect injuries or other defects, natural deterioration and decay in transit or storage excepted.

210. Sec. 5. No person shall sell or offer, expose or have in his possession for sale, any fresh fruits or vegetables packed in any package in which the faced or shown surface gives a false representation of the contents of such package, and it shall be considered a false representation when more than twenty per cent of such fresh fruits or vegetables are substantially smaller in size than or inferior in grade to, or different in variety from, the faced or shown surface of such package, natural deterioration and decay in transit or storage excepted.

211. Sec. 6. Every person who, by himself, his agent or employe, knowingly violates any of the provisions of this act shall for each such offense, be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding ten dollars, or by imprisonment in the county jail for a period not exceeding thirty days, or by both such fine and imprisonment in the discretion of the court.

TABLE GRAPES.

(Act No. 107, Public Acts, 1913.)

AN ACT to regulate the packing for shipment and sale of table grapes, and providing penalties for violation thereof.

212. Section 1. *The People of the State of Michigan enact*, No grapes that are not ripe, or are the fruit of unhealthy vines, or are for any reason unhealthy or in a state of decay shall be packed for shipment by any grower, packer or shipper in any package or basket of less than sixteen pounds capacity.

213. Sec. 2. Any person or persons found guilty of violating any of the provisions of this act, in any court of competent jurisdiction, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than ten dollars nor more than one hundred dollars, or by imprisonment in the county jail for not less than ten days nor more than ninety days, or by both such fine and imprisonment in the discretion of the court.

214. Sec. 3. It shall be the duty of the state dairy and food commissioner, his deputies and assistants, to enforce the provisions of this act.

COLLECTION OF REGISTRATION FEES BY CIVIL SUIT.

Public Act No. 37, Session Laws 1913.

AN ACT to provide for the collection of registration, license and other fees due the state dairy and food department, by means of a civil suit in the state courts.

215. Section 1. *The People of the State of Michigan enact*, Whenever any corporation, firm or person en-

gaged as a dealer, manufacturer, storer or transporter of any food or beverage product for man or animal, doing business within the state shall for thirty days after the same becomes due refuse or neglect to pay any registration or license fee which the laws of Michigan require said corporation, firm or person to pay to the state dairy and food department, the state dairy and food commissioner may bring a civil suit in the name of the people of the state of Michigan for the use and benefit of the state dairy and food department for the recovery of said registration or license fee.

216. Sec. 2. Said suit may be commenced in the circuit court for the county of Ingham or in the circuit court of the county where the principal business office of such defendant corporation, firm or person shall be located and shall be prosecuted in like manner as in civil suits between individuals, and judgment and execution may follow in like manner and costs may be recovered to be taxed as in other civil cases, and all moneys recovered shall be paid into the state treasury for the use and benefit of the state dairy and food department: Provided, That no suit as authorized by this act, shall be commenced until thirty days after the defendant in such suit has been duly notified of his or her delinquency, either personally or by registered letter.

217. Sec. 3. All expenses incurred by the state dairy and food commissioner under this act shall be defrayed by the state dairy and food department out of its annual appropriation.

CARBONATED BEVERAGES, SYRUPS, EXTRACTS AND SOFT DRINKS.

(Act No. 288, P. A., 1915.)

AN ACT to regulate the manufacture and sale of carbonated beverages, syrups, extracts and soft drinks within the State and prescribe penalties for violation thereof.

218. Section 1. *The People of the State of Michigan enact*, No person, firm or corporation shall manufacture and bottle for sale any carbonated beverages, soda water, grape juice, cider, mineral water, or other soft drink within this State without having first filed with the Dairy and Food Commissioner an application for a license, accompanied with a fee of ten dollars; upon receipt of which application the Dairy and Food Commissioner shall issue to the person, firm or corporation making such application, a license to manufacture carbonated beverages, soda waters, grape juice, cider, mineral waters or other soft drinks as hereinafter provided. Said license shall run from one year from the date of the application, unless sooner revoked as herein provided and shall be renewed annually thereafter.

219. Sec. 2. No person, firm or corporation shall sell, offer for sale or have in their possession with intent to sell, any soda water syrup or extract, soft drink syrup, or extract bearing a distinguishing name or trade mark, without first registering the name or brand of the syrup or extract, and the name and address of the manufacturer thereof, with the Dairy and Food Commissioner. He or they shall also pay into the State Treasury at the time of making such registration a license fee of five dollars for each and every brand of said syrup or extract that is sold or offered for sale. Said registration shall be renewed annually: Provided, That whenever any manufacturer, agent or seller shall have paid this fee, his agent

or dealer using the same shall not be required to do so. All moneys collected by the Dairy and Food Commissioner under the provisions of this act shall be paid into the State Treasury. The provisions of this section shall not apply to local sellers of soda water, grape juice, cider, or other carbonated beverages, as to syrups and extracts made by themselves for their own use exclusively. A manufacturer, jobber or dealer in every syrup, extract or soft drink required to be licensed under this section, shall, upon making application for such license, file with the Dairy and Food Commissioner a sample of said syrup, extract or soft drink for analysis, and said license shall not be granted by the Dairy and Food Commissioner unless he shall determine that said syrup, extract or soft drink is free from all harmful drugs and other ingredients that are injurious to health.

220. Sec. 3. The Dairy and Food Commissioner shall have the power to revoke any license issued under the provisions of this act, whenever it is determined by himself or any of his deputies, chemists or other properly qualified official that any of the provisions of this act have been violated. Any person, firm or corporation whose license has been so revoked shall discontinue the manufacture of bottle carbonated beverages, soda waters, grape juice, cider or other mineral waters until the provisions of this act have been complied with and a new license issued. He may revoke such license temporarily until there is a compliance with such conditions as he may prescribe, or permanently for the unexpired period of such license.

221. Sec. 4. Before revoking any license, the Dairy and Food Commissioner shall give written notice to the licensee affected, stating that he contemplates the revocation of the same and giving his reasons therefor. Said notice shall appoint a time of hearing before said commissioner and shall be mailed by registered mail to the licensee. On the day of hearing, the licensee may present such evidence to the commissioner as he deems fit, and after hearing all the testimony, the commissioner

shall decide the question in such manner as to him appears just and right.

222. Sec. 5. Any licensee who feels aggrieved at the decision of the commissioner, may appeal from said decision within ten days by writ of *certiorari* to the circuit court of the county where licensee resides and issue shall be framed in said court and a trial had and its decision shall be final.

223. Sec. 6. For the purpose of this act a bottled carbonated beverage, soda water, grape juice, cider or other soft drink, except pure fruit juices, shall consist of a beverage made from a pure cane or beet sugar syrup, containing pure flavoring materials, with or without added fruit acid, with or without added color and shall contain in the finished product not less than eight per cent sugar: Provided, That nothing in this act shall prohibit the use of any other harmless ingredient in the manufacture of carbonated beverages: And Provided further, That whenever artificial coal tar colors are used nothing but the certified colors as approved by the federal government are permissible. The provisions of this section shall not apply to retailers who do not bottle soda water or other soft drinks, or to beverages made in imitation of beer, bitter drinks or other similar drinks. And all bottled carbonated beverages or other soft drinks not in compliance with the standards established by this act, shall be deemed to be adulterated.

224. Sec. 7. Whenever artificial colors or flavors are used in the manufacture of carbonated beverages, soda waters, grape juice, cider, mineral waters or other soft drinks the bottle or other container shall be distinctly labeled "Artificially colored and flavored." All ciders, fruit ades, fruit juices or other similar drinks that are made in imitation of the natural product shall be properly and distinctly labeled with the word "Imitation" followed by the name of the beverage. All beverages sold in bulk; or from open receptacles that contain artificial coloring or artificial flavors of any character, shall be so labeled, said labels to be prominently displayed on all

stands, booths, or other places where said beverages are sold or dispensed. Labels for this purpose shall not be less than four inches wide and ten inches long, and shall contain the following:

“Artificially colored, artificially flavored,” or “Artificially colored, imitation flavor.” When said beverages contain artificial color and natural fruit flavor, said labels shall indicate the presence of the artificial coloring as follows: “Artificially colored.” When said beverages contain artificial flavors and no artificial coloring, they shall be labeled as follows: “Artificial flavor,” or “Imitation..... flavor.”

225. Sec. 8. All buildings, stores, factories, or other places where carbonated beverages, soda waters, grape juice, cider, mineral waters or other soft drinks are manufactured or bottled shall be well lighted and ventilated and shall be kept at all times in a sanitary condition. All machines, bottles, jars or other utensils used in the manufacture of carbonated beverages, soda water, mineral waters or other soft drinks shall be kept at all times in a clean and sanitary place and in a sanitary condition.

226. Sec. 9. All bottles used in the manufacture of carbonated beverages, soda waters, grape juice, cider, carbonated mineral waters or any other soft drink, before being filled shall be sterilized by soaking in a hot caustic solution of not less than one hundred twenty degrees Fahrenheit that shall contain not less than five per cent caustic or alkali, expressed in terms of sodium hydrate, for a period of not less than five minutes, then thoroughly rinsed in pure water until free from alkali; or by any other suitable process that will properly sterilize the bottles.

227. Sec. 10. No bottles shall be used in the manufacture of carbonated beverages, soda waters, grape juice, cider, mineral waters or other soft drinks, in which the metal or rubber part of the stopper comes in contact with the beverage. The provisions of this section shall not apply to carbonated water put up in “siphons.”

228. Sec. 11. Any person, firm or corporation who shall do any of the acts or things prohibited, or neglect or refuse to do any of the acts or things required by this act or in any way violate any of its provisions, shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for a period of not more than ninety days or by both such fine and imprisonment in the discretion of the court.

229. Sec. 12. The Dairy and Food Commissioner shall be charged with the enforcement of the provisions of this act.

STATE BRAND FOR BUTTER.

(Act No. 53, P. A., 1915.)

AN ACT to provide for a state brand for Michigan butter, for the purpose of insuring a higher standard of excellence and quality, a more uniform butter market, and to insure a more healthful product for consumption at home and abroad, and to regulate the use of such mark or brand.

230. Section 1. *The People of the State of Michigan enact*, Any person, firm or corporation manufacturing butter in this state may use the brand, mark or label therefor as provided in this act.

231. Sec. 2. Said trade mark or brand and its use and regulation shall be in charge of and under the control of a commission of three members consisting of the state dairy and food commissioner, the president of the Michigan State Dairymen's Association and the president of the Michigan State Butter Makers' Association.

232. Sec. 3. The state trade mark or brand shall be controlled, used, manufactured and issued under such rules and regulations as may be found necessary from time to time by the said commission. Said commission or commissioners shall have power to make such changes

in the rules and regulations for the use of said trade mark or brands as it may deem necessary from time to time.

233. Sec. 4. The rules governing the use of such trade mark or brand shall be published by and through bulletins issued by the state dairy and food department. Such labels, stamps or other means of imprinting such trade mark or brand upon the manufactured product or the receptacles containing the same, shall be furnished to those entitled to the use thereof by the state dairy and food department.

234. Sec. 5. The said commission is hereby directed and authorized to secure a copy-right under the laws of the United States for trade marks or brands, and copy-rights for such trade mark or brand of butter. Said trade mark, brand, or label shall be of such size and design as the said commission shall designate and shall contain in prominent letters, the words, "Michigan butter, License Number, " and the words, "State Butter Control."

235. Sec. 6. Any person, firm or corporation desiring to use the brand or label provided for in this act in the manufacture or sale of butter shall make written application for a license therefor to the dairy and food commissioner, which application shall describe by location and name the creamery or factory in which such butter is to be manufactured, and give such other information as may be required. A license shall be granted to such person, firm or corporation to use such brand or label at the factory described in the application, if on investigation by the dairy and food commissioner, his deputy or duly authorized assistants, it appears that all the provisions of this act and the rules and regulations by the commission have been complied with. Such license shall state that the brand or label provided for by the said commission may be used in connection with the manufacture or sale of butter from the factory described in such license. Such factories so described shall be given the same number as the serial number of the license.

236. Sec. 7. No person, firm or corporation shall use in the manufacture or sale of butter such brand or label without having first obtained a license therefor as provided in this act. Such license so granted may be revoked by the said commissioner if any of the conditions of this act or of the rules and regulations of the commission are not complied with. Such license so granted shall not be transferable.

237. Sec. 8. The use of any brand or mark for butter or butter substitute resembling the above brand or so near like it that it can be confounded with it, is prohibited.

238. Sec. 9. Any person, firm or corporation violating any of the provisions of this act shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined not more than one hundred dollars or imprisoned in the county jail for not more than thirty days.

STANDARD MILK BOTTLES.

(Act No. 154, P. A., 1915.)

AN ACT to prevent fraud and deception in the sale of milk and cream, providing standard milk bottles and for the sealing thereof.

239. Section 1. *The People of the State of Michigan enact*, On and after January one, nineteen hundred sixteen, bottles used for the sale of milk and cream in this state shall be of the capacity of half gallon, three pints, one quart, one pint, ten ounce, half pint, one gill filled full to the bottom of the lip. The following variations on individual bottles or jars may be allowed: Six drams above and six drams below on the half gallon; five drams above and five drams below on the three-pint; four drams above and four drams below on the quart; three drams

above and three drams below on the pint; two and one-half drams above and two and one-half drams below on the ten ounce; two drams above and two drams below on the half pint; two drams above and two drams below on the gill. But the average contents of not less than twenty-five bottles selected at random from at least four times the number tested must not be in error by more than one-quarter of the tolerances: One and five-tenths drams above and one and five-tenths drams below on the half gallon; one and twenty-five hundredths drams above and one and twenty-five hundredths drams below on the three pint; one dram above and one dram below on the quart; seventy-five hundredths drams above and seventy-five hundredths drams below on the pint; seventy-five hundredths drams above and seventy-five hundredths drams below on the ten ounce; five-tenths drams above and five-tenths drams below on the half pint; five-tenths drams above and five-tenths drams below on the gill. Bottles or jars used for the sale of milk shall have clearly blown or otherwise permanently marked in the side of the bottle, the capacity of the bottle and the word "sealed" and in the side or bottom of the bottle the name, initials or trademark of the manufacturer and designating number, which designating number shall be different for each manufacturer and may be used in identifying the bottles. The designating number shall be furnished by the state superintendent of weights and measures upon application by the manufacturer, and upon filing by the manufacturer of a bond in the sum of one thousand dollars with sureties to be approved by the attorney general, conditioned upon their performance of the requirements of this section. A record of the bonds furnished, the designating numbers, and to whom furnished, shall be kept in the office of the superintendent of weights and measures.

240. Sec. 2. On and after January one, nineteen hundred sixteen, any manufacturer who sells milk or cream bottles to be used in this state, which do not comply as to size and markings with the provisions of this act, shall suffer the penalty of five hundred dollars, to be re-

covered by the attorney general in an action against the offender's bondsmen, to be brought in the name of the people of the state. Any dealer who uses, for the purpose of selling milk or cream, jars or bottles purchased after this law takes effect, which do not comply with the requirements of this act as to markings and capacity, shall be deemed guilty of using false or insufficient measure.

241. Sec. 3. Sealers of weights and measures are not required to seal bottles or jars for milk or cream marked as in this act provided, but they shall from time to time make tests on individual bottles used by the various firms in the territory over which they have jurisdiction, in order to ascertain whether the above provisions are being complied with, and they shall report violations found immediately to the superintendent of weights and measures. Any dealer who knowingly uses for the purpose of selling milk or cream, jars or bottles purchased after this law takes effect, which do not comply with this act as to marking the capacity, shall be guilty of a misdemeanor and be punished accordingly.

PASTEURIZATION.

(Act No. 93, P. A., 1915.)

AN ACT to provide for pasteurizing the by-products of cheese factories, creameries, skimming stations and other places where milk is received and distributed.

242. Section 1. *The People of the State of Michigan enact*, Every owner, operator or manager of a cheese factory, creamery, skimming station or other place where milk is received and the by-products distributed, shall, before returning to or delivering to any person or persons

any skim milk, whey, buttermilk, or other milk by-products to be used for feeding purposes for farm animals, cause such skim milk, whey, buttermilk, or other milk by-products to be thoroughly pasteurized by heating the same to one hundred forty-five degrees Fahrenheit and holding at that temperature for not less than thirty minutes or to one hundred eighty-five degrees without holding: Provided, That the provisions of this act shall not apply to cheese factories or creameries that pasteurize the milk or cream prior to manufacture.

243. Sec. 2. Whoever violates any of the provisions of this act shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine of not more than one hundred dollars, or imprisonment in the county jail for not exceeding ninety days, or both, in the discretion of the court.

OFFENSES AGAINST THE PUBLIC HEALTH.

(C. L. 11404) Section 1. If any person shall knowingly sell any kind of diseased, corrupted or unwholesome provisions, whether for meat or drink, without making the same fully known to the buyer, he shall be punished by imprisonment in the county jail not more than six months, or by fine not exceeding two hundred dollars.

(C. L. 11405) Section 2. If any person shall fraudulently adulterate, for the purpose of sale, any substance intended for food, or any wine, spirits, malt liquor, or other liquor intended for drinking, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding three hundred dollars, and the article so adulterated shall be forfeited and destroyed.

(C. L. 11406) Section 3. If any person shall fraudulently adulterate, for the purpose of sale, any drug or medicine, in such manner as to render the same injurious to health, he shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding four hundred dollars, and such adulterated drugs and medicines shall be forfeited and destroyed.

MICHIGAN SUPREME COURT.

DECISIONS RELATIVE TO DAIRY AND FOOD LAWS.

PEOPLE v. SNOWBERGER.

(Opinion filed May 25, 1897.)

Adulteration of Food—Statutory Offenses—Intent—Police Power.

1. It is competent for the legislature under the police power, to provide for the protection of the public health by making it an offense punishable by fine and imprisonment to sell adulterated food or drink, irrespective of the seller's knowledge of the adulteration.
2. Act No. 193, Public Acts 1895, prohibits the manufacture or sale of adulterated articles of food or drink, and prescribes what shall be deemed adulteration within the meaning of the act. Section 8 forbids any person from *knowingly* offering for sale cheese which is falsely labeled; this being the only case in which knowledge is expressly made an element of an offense designated by such statute. *Held*, that proof of guilty knowledge or intent is not essential to the conviction of one who sells adulterated food.

(113 Mich. 86.)

Exceptions before judgment from Monroe; Kinne, J.

Michael Snowberger was convicted of selling adulterated food, in violation of Act No. 193, Public Acts of 1895.
Conviction affirmed.

William Look and Ira G. Humphrey, for appellant.

Bowen, Douglas & Whiting, of counsel.

Willis Baldwin, Prosecuting Attorney, for the people.

Long, C. J.: Respondent was convicted under an information charging that: "On the 19th day of April, A. D., 1897, at the city of Monroe, and in the county aforesaid, Michael Snow-

berger did offer for sale, and sell, to Carl Franke, an adulterated article of food, to wit: A quantity of mustard, to wit, a quarter of a pound, colored and adulterated with tumeric, whereby the said mustard, as an article of food, was damaged and its inferiority concealed and whereby it was made to appear of better and of greater value than it really was, the same not being a mixture or compound recognized as ordinary articles or ingredients of articles of food; contrary to the form of the statute in such case made and provided," etc.

The information was filed under Act No. 193, Public Acts 1895, entitled "An act to prohibit and prevent adulteration, fraud and deception in the manufacture and sale of articles of food and drink." The act provides:

Section 1. "No person shall within this State manufacture for sale, offer for sale, or sell any article of food which is adulterated within the meaning of this act."

Section 2. "The term food as used herein, shall include all articles used for food or drink, or intended to be eaten or drunk by man, whether simple, mixed or compound."

Section 3. "An article shall be deemed to be adulterated within the meaning of this act: One, If any substance or substances have been mixed with it so as to lower or depreciate or injuriously affect its quality, strength or purity; Two, If any inferior or cheaper substance or substances have been substituted wholly or in part for it; Three, if any valuable or necessary constituent or ingredient has been wholly or in part abstracted from it; Four, If it is sold under the name of another article; Five, If it consists wholly or in part of a diseased, decomposed, putrid, infected, tainted or rotten animal or vegetable substance or article, whether manufactured or not, or in case of milk, if it is the product of a diseased animal; Six, If it is colored, coated, polished or powdered, whereby damage or inferiority is concealed, or if by any means it is made to appear better or of greater value than it really is; Seven, If it contains an added substance or ingredient which is poisonous or injurious to health: Provided, That the provisions of this act shall not apply to mixtures or compounds recognized as ordinary articles or ingredients of articles of food, if each and every package sold or offered for sale be distinctly labeled as mixtures or compounds, and are not injurious to health."

Section 19 makes any violation of the act a misdemeanor and provides a penalty by a fine of not less than \$100 nor more than \$500, or by imprisonment in the county jail, etc.

On the trial respondent admitted, that on the 19th day of April, 1897, he, at the city of Monroe, this State, offered for sale and did sell to Carl Franke a quantity of mustard, to wit, a quarter of a pound which was afterwards found upon a chemical examination to be colored and adulterated with tumeric, whereby the said mustard as an article of food was damaged and its inferiority concealed, and it was thereby made to appear of greater and better value than it really was; the same not being a mixture or compound recognized as an ordinary article or ingredient of articles of food.

But he claimed that said article of mustard, so sold was purchased by him as a pure article in good faith, and that he believed at the time of the purchase by him and also at the time of the sale to the said Franke, that the same was pure mustard, free from any coloring and adulteration with tumeric or any other coloring or adulterant, and that no inferiority was concealed whereby it was made to appear of greater or better value than it really was; that at the time he purchased the same he asked for pure mustard and that the same was warranted to him as pure; that he did not make or cause to have made a chemical examination of the same and did not inform himself or endeavor to ascertain the methods of determining pure from impure mustards, but relied upon the representations of his vender and the appearance of the article to the eye; and that he did not intend to violate the law.

From such conviction respondent appeals.

It is the contention of counsel for respondent that it was the intent of the legislature to provide by the act that no person should be convicted and punished for selling adulterated food or drink without showing that he knew the same to be adulterated; that the information does not charge such knowledge, and the proofs disclosed that respondent acted in good faith and in the belief that the article sold was pure and unadulterated.

The act cannot be so construed. The offense under the act consists in selling an article intended to be eaten or drunk which is adulterated. Section 8 of the acts shows conclusively that the legislature did not intend to make criminal intent or guilty knowledge a necessary ingredient of the offense. As a

rule there can be no crime without a criminal intent; but this rule is not universal.

In *People v. Roby*, 52 Mich. 577 (50 Am. Rep. 270), the respondent was convicted of the offense under the statute of keeping his saloon open on Sunday. It was there said: "It is contended that to constitute an offense under the section referred to (How. Stat., Sec. 2274), there must be some evidence tending to show an intent on the part of the respondent to violate it.

* * * * The section under which Roby is prosecuted makes the crime consist, not in the affirmative act of any person, but in the negative conduct of failing to keep the saloon closed. As a rule there can be no crime without a criminal intent; but this is not by any means a universal rule. One may be guilty of the high crime of manslaughter when his only fault is gross negligence, and there are many other cases where mere neglect may be highly criminal. Many statutes which are in the nature of police regulations, as this is, impose criminal penalties irrespective of any intent to violate them; the purpose being to require a degree of diligence for the protection of the public which shall render violation impossible."

Many cases are cited in that case where convictions were sustained although the element of guilty knowledge was lacking. Thus in Massachusetts a person may be convicted of the crime of selling intoxicating liquors as a beverage though he did not know it to be intoxicating.

Com. v. Boynton, 2 Allen, 160.

And of the offense of selling adulterated milk, though ignorant of its adulteration.

Com. v. Farren, 9 Allen, 489.

Com. v. Nichols, 10 Allen, 199.

Com. v. Waite, 11 Allen, 264.

Com. v. Smith, 103 Mass. 444.

In Missouri a magistrate may be liable to the penalty for performing the marriage ceremony for minors without consent of parents or guardians, though he may suppose them to be of the proper age.

Beckham v. Nacke, 56 Mo., 546.

Where the killing and sale of a calf under a specified age is prohibited there may be a conviction though the party was ignorant of the animal's age.

Com. v. Raymond, 97 Mass., 567.

In *People v. Welsh*, 71 Mich. 548, this court in speaking of *People v. Roby*, supra, said: "When a statute does not make intent an element of the offense, but commands an act to be done or omitted which in the absence of the statute might have been done or omitted without culpability, ignorance of the fact or state of things contemplated by the statute will not excuse its violation;" citing:

State v. Hartfield, 24 Wis., 60.

In the late case in this court of *Walcott v. Judge of Superior Court*, 112 Mich. 311, the relator, as prosecuting attorney of the county, filed an information against one Fred Saunders, charging him with being engaged in selling liquor without giving the bond required by the statute. The bond was fair upon its face, but one of the sureties, it appears was disqualified under section 2282d1, 3 How. Stat. The information did not allege that respondent had knowledge of this defect in the bond. The information was quashed by the court below, and the relator asked the aid of mandamus to compel the respondent to reinstate the case. It was said by this court in the majority opinion: "It was the intention of the legislature to make the execution and delivery of the prescribed bond a condition precedent to sale, and to require the person desiring to engage in the business mentioned to assume the responsibility of knowing that the bond when presented complies in all essential particulars with the law. He must know that his sureties are males, that they are resident freeholders of the township, village or city in which the business is to be carried on, that they hold none of the offices prohibited by the act, and that at the time the bond is filed neither is a surety upon more than two bonds required by the act."

It appeared that one of the sureties was already upon more

than two bonds; and the writ was granted compelling the respondent to reinstate the case. The case of *People v. Roby* was cited in that case in support of the proposition that intent was not an ingredient of the offense.

These regulations are under the police power in the State. Undoubtedly it was competent for the legislature to prohibit the sale of adulterated articles of food and drink. The police power of the State extends to the protection of the health as well as of the lives and property of the citizens. Generally it is for the legislature to determine what laws and regulations are needed to protect the public health and secure the public comfort and safety. If it passes an act ostensibly for the public health and thereby destroys or takes away the property of the citizen or interferes with his liberty it is for the courts to determine whether it relates to and is appropriate to promote such public health. Under the police power the conduct of individuals and the use of property may be regulated so as to interfere to some extent with the freedom of the one and the enjoyment of the other. It cannot be doubted that the legislature intended by this act to protect the public against the harmful consequences of sales of adulterated food, and to the end that its purpose might not be defeated to require the seller at his peril to know that the article which he offers for sale is not adulterated.

As was said by the supreme court of Ohio, in *State v. Kelly*, 54 Ohio St. 166: "If this statute had imposed upon the State the burden of proving * * * his knowledge of its adulteration, it would thereby have defeated its declared purpose."

In *state v. Smith*, 10 R. I. 260, the court, in speaking of the offense of selling adulterated milk, said: "Counsel for defendant asked the court to charge that there must be evidence of a guilty intent on the part of the defendant and of a guilty knowledge in order to convict him. Our statute in that provision of it, under which this indictment was found does not essentially differ from the statute of Massachusetts, and there previous to the enactment of our statute the supreme court had determined that a person might be convicted although he had no knowledge of the adulteration; the intent of the legislature being that the seller of milk should take upon himself the risk

of knowing that the article he offers for sale is not adulterated."

Statutes in many states have been passed providing that whoever sells, or keeps or offers for sale adulterated milk, or milk to which water or other foreign substance has been added shall be punished, etc. Under these statutes it has been decided many times that risk is upon the seller of knowing that the article he offers for sale is not adulterated, and that it is not necessary in an indictment under such a statute to allege or prove criminal intent or guilty knowledge.

Com. v. Smith, 103 Mass., 444.

Com. v. Warren, 160 Mass., 533.

People v. Clipperly, 101 N. Y., 634.

The same rule that no criminal intent is necessary has been held to apply under an act forbidding the sale of oleomargarine or other imitations of dairy products, unless express notice be given to the purchaser.

Bayles v. Newton, 50 N. J. L., 549.

Com. v. Gray, 150 Mass., 327.

The English rule is in keeping with the doctrine in this country on this subject.

Roberts v. Egerton, L. R., 9 Q. B., 494.

The statute not requiring knowledge on the part of the seller to make the offense complete, we are satisfied that the conviction must be sustained. No case has been cited, and we are not able to find one, where a contrary doctrine is laid down. The act may work hardship in many cases; but that question is one to be addressed to the legislature and not to the courts. As we have said, it was within the power of the legislature to pass the act making it an offense punishable with fine and imprisonment to sell adulterated food or drink, although the person selling the same has no knowledge that it is adulterated. Under this statute one making sales must do so at his peril.

The conviction is affirmed.

Grant, J., did not sit. The other justices concurred.

PEOPLE v. WORDEN GROCERY CO.

(Opinion filed December 6, 1898.)

Constitutional Law—Act to Prevent Sale of Adulterated Vinegar
—Complaint—Reasonableness of Statute—Defense.

1. The title to an act reading "An act in relation to the manufacture and sale of vinegar, and to repeal Act No. 224 of the Public Acts of 1889, approved, etc., held broad enough to support an enactment to prevent deception in the sale of vinegar or to prevent adulteration of vinegar.
2. A conviction for a sale of "fermented cider vinegar," which was not up to the standard prescribed by Act No. 71, Public Acts of 1897, may be had under a complaint drawn under section 2 of the act.
3. The question as to whether the requirements of an act passed to prevent the sale of adulterated vinegar are such as to render the act unreasonable, cannot be determined by the courts and does not raise a question of fact for determination by a jury.
4. Where a sample of vinegar is taken from a dealer for the purpose of testing it to see if it conforms to the standard required by law it is not necessary that a sample be left with the dealer.
5. A prosecution for a sale of vinegar in violation of Act No. 71, Public Acts of 1897, cannot be defended on the ground that the person so manufacturing or selling vinegar below the standard has no knowledge that it is not within the standard prescribed.

Error to the circuit court of Kent county; Allen C. Adsit, J.

Appeal of the Worden Grocer Co. from a conviction of a violation of Act No. 71, Public Acts of 1897. Affirmed.

Frank A. Rodgers, Prosecuting Attorney; Benn M. Corwin, Assistant Prosecuting Attorney, for the people.

Rood & Hindman, for respondent.

Long, J.: The complaint in this cause charges that the defendant: "On February 5, 1898, did unlawfully sell and deliver to John T. Owens of Benton Harbor, Michigan, a large quantity, to wit: One barrel of vinegar which was not then and there in compliance with the provisions of Act No. 71, Pub-

lic Acts, 1897, in this, viz.: That said vinegar was sold as "fermented cider vinegar" and branded as such; that said vinegar contained less than one and three-fourths per cent by weight upon full evaporation (at the temperature of boiling water) of solids contained in the fruit from which said vinegar is fermented, to wit: One and fifty-one one-hundredths per cent of solids; and said vinegar contained less than two and a half tenths of one per cent ash or mineral matter, the same being the product of the material from which said vinegar was manufactured, to wit: Eight one-hundredths of one per cent of ash or mineral matter, against the form of the statute in such case made and provided," etc.

The cause was commenced in the police court, and, being removed to the circuit, came on to be heard before a jury. The defendant refused to plead, and counsel for defendant thereupon made a motion to quash the complaint and summons for several reasons which will hereafter be discussed. The court upon the trial directed a verdict of guilty, and the cause comes to this court on exceptions before judgment.

The title of the act reads: "An act in relation to the manufacture and sale of vinegar, and to repeal Act No. 224 of the Public Acts of 1889, approved," etc. Sections one and two of the act, being the sections in question, provide:

"Section 1. The People of the State of Michigan enact, That no person shall manufacture for sale, offer or expose for sale, sell or deliver, or have in his possession with intent to sell or deliver, any vinegar not in compliance with the provisions of this act. No vinegar shall be sold as apple, or orchard or cider vinegar, which is not the legitimate product of pure apple juice, known as apple cider or vinegar not made exclusively of said apple cider or vinegar into which foreign substance, drugs or acids have been introduced, as may appear upon proper test, and upon said test, shall contain not less than one and three-fourths per cent, by weight, of cider vinegar solids upon full evaporation at the temperature of boiling water.

"Section 2. All vinegar made by fermentation and oxidation without the intervention of distillation shall be branded 'fermented vinegar' with the name of the fruit or substance from which the same is made. And all vinegar made wholly or in part from distilled liquor shall be branded 'distilled vinegar,' and all of such distilled vinegar shall be free from coloring matter added during or after distillation and from color other

from that imparted to it by distillation. And all fermented vinegar not distilled shall contain not less than one and three-fourths per cent, by weight, upon full evaporation (at the temperature of boiling water) of solids, contained in the fruit or grain from which said vinegar is fermented, and said vinegar shall contain not less than two and a half tenths of one per cent ash or mineral matter, the same being the product of the material from which said vinegar is manufactured. And all vinegar shall be made wholly from the fruit or grain from which it purports to be or is represented to be made, and shall contain no foreign substance and shall contain not less than four per cent, by weight, of absolute acetic acid."

It appears by the testimony that the defendant, a Michigan corporation doing business at Grand Rapids, on February 5, 1898, sold a barrel of vinegar to one John T. Owens of Benton Harbor. The sale is admitted. A sample of the vinegar was taken from this barrel and analyzed by the State Analyst, Mr. Fred H. Borradaile. The correctness of this analysis is not disputed. This analysis showed that the vinegar did not comply with the requirements of the statute in that it did not contain the amount of solids nor the amount of ash or mineral matter required.

The contentions made by counsel for defendant mostly relate to the validity of the act.

1. It is contended that the title to the act does not express any object; that the act was intended to prevent deception in the sale of vinegar or to prevent adulteration of vinegar, but that no such object is expressed in the title; and that the act is therefore in conflict with section 20 of article 4, of the constitution of this State, which provides that: "No law shall embrace more than one object, which shall be expressed in its title."

We think this contention sufficiently answered by what was said by this court in *Soukup v. VanDyke*, 109 Mich. 681. There the title was: "An act relative to justices' courts in the city of Grand Rapids." It was said: "The title is sufficient if it fairly and reasonably announces the object and that is a single one. If this requirement be observed, the legislature must determine for itself how broad and comprehensive shall be the

object of a statute and how much particularity shall be employed in the title in defining it."

In *People v. Kelly*, 99 Mich. 82, the title under discussion was: "Act act relative to disorderly persons, and to repeal," etc.

See also:

State v. County Judges, 2 Iowa, 280.

McAunich v. The Miss. & Mo. R. R. Co., 20 Iowa, 342.

2. Counsel contend that the complaint being drawn under section two of the act, no conviction can follow; that if any violation of the law be found, it is of section one and not of section two of the act; that, therefore, the complaint was drawn under the wrong section.

This contention cannot be sustained. It is plain from the reading of these sections that the legislature intended that all fermented vinegar should come up to the required standard, whether made from fruit or grain.

3. The defendant contends that the act is unreasonable and therefore void as beyond the police power of the State, in that the test for cider vinegar in regard to solids is arbitrary, unscientific and not calculated to accomplish the end sought by the legislature, viz.: To protect the public health against spurious vinegar; that such test is no test, because:

a. Said solids and ash are indifferent ingredients of vinegar from a hygienic standpoint.

b. Their comparative absence or presence is not an essential ingredient of pure apple cider vinegar.

c. A vinegar can be manufactured which will satisfy the requirements of the statute and yet contain no materials from apples or the product of apples.

d. A pure apple cider vinegar is frequently made which is below the requirements of the statute in solids and ash.

e. The less proportion of solids is a proof of greater purity in the vinegar and of its better keeping qualities.

These questions might very properly be addressed to the legislature, but are matters with which the court has nothing to do. It is not a part of the functions of the court to in-

investigate the facts entering into questions of public policy merely. Under our system that power is lodged in the legislative branch of the government. It belongs to that branch to determine primarily what measures are appropriate or needful for the protection of the public morals, the public health or the public safety.

Barton v. McWhinney, 85 Ind., 481.

Mugler v. Kansas, 123 U. S., 660.

Powell v. Pennsylvania, 127 U. S. 685.

In *People v. Snowberger*, 113 Mich. 92, it was said by this court: "The act may work hardship in many cases, but that question is one to be addressed to the legislature and not to the courts."

The question of the reasonableness of the acts found in many states relative to the sale of milk below a certain standard has been frequently raised in the courts, and the acts upheld.

In *Com. v. Evans*, 132 Mass. 11, the court passing upon such a statute said: "The intention of the legislature and the practical operation of this section in connection with the third section is to provide that it shall be unlawful to sell milk containing less than thirteen per centum of milk solids. This belongs to the class of police regulations designated to prevent frauds and to protect the health of the people, which it is within the constitutional power of the legislature to enact."

In *State v. Smyth*, 14 R. I. 100, the court said: "It was the purpose of the statute to prohibit, not only the dealing in milk which had been adulterated, but also in milk of such inferior quality as to fall below the standard named in section three. It is equally a fraud on the buyer, whether the milk which he buys was originally good and has been deteriorated by the addition of water or whether in its natural state it is so poor that it contains the same proportion of water as that which has been adulterated." See also:

State v. Newton, 45 N. J. L., 469.

Bertholf v. O'Reilly, 74 N. Y., 509.

State v. Campbell, 64 N. H., 403.

10 Am. St. Rep., 419.

But counsel contend that the reasonableness of this act is

a question of fact for the jury to determine from the expert chemical evidence.

This question is neither for the court nor the jury to determine. In *People v. Clipperly*, 101 N. Y. 634, that very question was discussed and decided adversely to the claim here. It was said: "The defendant takes the broader ground that the legislature cannot under the constitution prohibit the sale of milk drawn from healthy cows which in its natural state falls below standard fixed by the act, unless such milk, or the articles made from it, are in fact unwholesome or dangerous to public health. How is that question of fact to be determined? The court cannot take judicial notice whether milk below the standard is or is not unwholesome or dangerous to public health. Is that to be a question for the jury? If so, the court must charge a jury in each case that if they find milk below that standard to be unwholesome, then the statute is constitutional; if they find it to be wholesome, then the statute is unconstitutional. Evidently a constitutional question cannot be settled, or rather, unsettled in that way. The constitutionality would vary with the varying judgments of juries."

In the emery wheel case before us, in *People v. Smith*, 108 Mich. p. 534, a somewhat similar question was discussed. It was said: "If the courts find the plain provisions of the constitution violated, or if it can be said that the act is not within the rule of necessity in view of facts of which judicial notice may be taken, then the act must fall; otherwise it should stand."

See also:

People v. Girard, 145 N. Y., 109.
(45 Am. St. Rep. 595.)

4. Counsel also contend that defendant was not allowed, nor could it obtain, a sample of the vinegar in question for analysis, and was deprived of the right to produce evidence as to the amount of solids in the vinegar; and was thus deprived of property without due process of law.

The record shows that the defendant was not prevented from getting a sample of the vinegar by any person interested in the prosecution of the suit. The record shows that the only effort

it made to get such sample was a letter written to Mr. Owens who had bought and paid for the vinegar, requesting him to return it, to which the defendant received no reply, and it does not appear that Mr. Owens had any of the vinegar left at that time. No sample was left with the defendant by the prosecution; nor was this necessary.

Com. v. Coleman, 157 Mass., 460.

5. This statute forbids the manufacture and sale of vinegar not in compliance therewith; and persons manufacturing or selling vinegar below the standard do so at their peril. It is no defense that the person so manufacturing or selling vinegar below the standard has no knowledge that it is not within the standard prescribed.

People v. Snowberger, 113 Mich., 86; 71 N. W. R., 497.

We have examined the other questions raised, but do not deem it necessary to discuss them. They relate mostly to offers of testimony which the court below ruled out; and, we think, properly.

The testimony was uncontradicted that the vinegar sold was not in compliance with the statute. The sale was admitted.

The court was not in error in directing the verdict. The conviction must be affirmed.

Grant, C. J., did not sit. The other justices concurred.

PEOPLE v. DETTENTHALER.

GROSVENOR v. JACKSON CIRCUIT JUDGE.

(Opinions filed December 6, 1898.)

Constitutional Law—Passage of Act Without Enactment Clause
—Constitutional Provision Mandatory—Addition of Clause
by Governor—Act 76, Laws of 1897, Invalid.

1. The provision in the Michigan State constitution, found in Sec. 48 of Art. IV., that all laws shall be styled, "The People of the State of Michigan enact," is mandatory and the pas-

sage of an act without the enactment clause renders the act invalid.

2. The addition of the enacting clause by the Governor before affixing his signature will not render the law valid which was passed without an enactment clause.
3. Act No. 76, Laws of 1897, being "An act to prevent deception in the manufacture and sale of imitation butter" held to be invalid because of the passage of the act without an enactment clause was not rendered valid by the addition of such clause by the Governor before affixing his signature to the act.

Error to the superior court of Grand Rapids; Edwin A. Burlingame, judge.

Exceptions taken by Frank J. Dettenthaler from a conviction of a violation of the pure food law.—Reversed and no new trial.

Frank D. Rodgers, Prosecuting Attorney, (Rodgers, McDonald & Corwin of counsel), for the people.

Rood & Hindman, and E. F. Sweet, for respondent.

Certiorari by Elliot O. Grosvenor, Dairy and Food Commissioner, to review the action of the Jackson circuit judge in denying a mandamus. Affirmed.

John G. Hawley and Benn M. Corwin, for relator.

Rood & Hindman and E. F. Sweet, for respondent.

Hooker, J.: These cases involve the validity of Act No. 76, Public Acts, 1897, which is as follows:

"An act to prevent deception in the manufacture and sale of imitation butter."

Section 1. The People of the State of Michigan enact, That no person, by himself or his agents, or servants, shall render or manufacture, sell, offer for sale, expose for sale, or have in his possession with intent to sell, any article, product or compound made wholly or in part out of any fat, oil or oleaginous substance or compound thereof, not produced from unadulterated milk or cream from the same, which shall be in imitation of yellow butter produced from pure unadulterated milk or cream from the same: Provided, That nothing in this act shall be construed to prohibit the manufacture or sale of oleomar-

garine in a separate and distinct form, and in such manner as will advise the consumer of its real character, free from coloration or ingredient, that causes it to look like butter.

Sec. 2. Whoever violates any of the provisions of section one (1) of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars, nor more than five hundred dollars, and the costs of prosecution, or by imprisonment in the county jail, or State House of Correction and Reformatory at Ionia, for not less than six months nor more than three years, or by both such fine and imprisonment in the discretion of the court for each and every offense.

Approved April 15, 1897.

The evidence in the first entitled cause shows that the defendant was convicted of the alleged offense of selling oleomargarine in contravention of this act.

In the other a complaint was made of a similar act to a justice, who refused to issue the warrant, and on application the circuit court denied a mandamus to compel it. The cases raise substantially the same questions, and were argued, and will be considered together. The validity of the law is questioned. The record shows that this was a senate bill and passed the senate without the constitutional enacting clause. The records of the house show that the bill was reported by the committee on agriculture and the committee of the whole, without amendment, and with the recommendation that it be passed. Under the head of "third reading of bills upon passage," the record of the house shows that "pending the third reading of the bill, Mr. Chamberlain moved that the bill be recommitted to the committee of the whole, which motion did not prevail. The bill having been read a third time, and the question being upon its passage pending the taking of the vote, Mr. Graham demanded the previous question. The demand was seconded. The question being, 'Shall the main question be now put?' The same was ordered. The bill was then passed, a majority of all the members elect voting therefor, by yeas and nays, as follows: * * * yeas 56, nays 19." As this is the only time the bill was before the house, we must find that the bill passed the house without an enacting clause, unless the contrary can be shown by other evidence. Counsel undertook to show that it was amended in this particular, by the records of the senate,

and the testimony of the clerk of the house. The evidence is in brief, that previous to the passage of the bill in the house the clerk noticed the absence of the enacting clause, and brought it to the attention of the house, and said that he would enter one, and accordingly wrote the words in the original bill, i. e., the one which was then before the house. He did not testify that the house took any action upon it, or that any record was made of it.

The senate record shows that the bill was subsequently returned to the senate, accompanied by a letter from the clerk of the house, reading as follows:

“House of Representatives.

“Lansing, April 7, 1897.”

“To the president of the Senate:

“Sir—I am instructed by the House to return to the Senate the following bill: Senate bill No. 6, file No. 24, entitled

“‘A bill to prevent deception in the manufacture and sale of imitation butter’ and to inform the Senate that the House has amended the same as follows: By inserting in line 1, Section 1, after the words ‘Section 1,’ the words ‘The People of the State of Michigan enact.’

Very respectfully,

“LEWIS M. MILLER.

“Clerk of the House of Representatives.

“In the passage of which, as thus amended, the House has concurred by a majority vote of all the members elect.”

It further appears that the senate concurred in such amendment.

We must determine, therefore, whether the house is shown to have amended the bill by inserting an enacting clause and if not whether the law is valid without it.

The most that can be claimed is that there is oral testimony, that the clerk announced its absence and stated that he would supply it. Inferentially perhaps we may say that there was no objection made, but the evidence is silent as to what, if anything, occurred. There is nothing but this inference of silence which imports acquiescence in the amendment. There is nothing to show definite action by the house which alone had power to amend the bill before it. So that if the clause is essential to the validity of the act we need not discuss the propriety of

admitting parol evidence to prove an amendment which should be shown by the record if one was authorized.

See Attorney General v. Rice, 64 Mich. 391.

Hart v. McElroy, 72 Mich. 446.

Sackrider v. Supervisors, 79 Mich. 66.

Is the constitutional enacting clause a requisite to a valid law? This must depend upon whether the constitutional provision is to be considered a mandatory provision or directory merely.

See Constitution, Art. IV., Sec. 48.

Among the authorities cited by the relator in support of his contention, is that of Swann v. Buck, 40 Miss. 268. The constitutional provision is similar to ours, and it was held that a substantial compliance was sufficient. In that case the style of the resolution was: "Resolved by the legislature of the State of Mississippi." The court was unable to discover a previous judicial decision of the question, but quoted Mr. Cushing to the effect that the prescribed "form must be strictly pursued, and that no equivalent language will be sufficient," and while declining to accept his rule said: "It is necessary that every law should show on its face the authority by which it is adopted, and promulgated, and that it should clearly appear that it is intended by the legislative power that enacts it that it should take effect as a law. These conditions being fulfilled all that is absolutely necessary is expressed. The word 'resolved,' is as potent to declare the legislative will, as the word 'enacted.'"

The case of McPherson v. Leonard, 29 Md. 377, held that the provision of the constitution of Maryland was directory, and that the omission of the words, "by the general assembly of Maryland," did not render the law invalid. The question appears to have been treated as a new one.

The case of Cape Girardeau v. Riley, 52 Mo. 427, follows the Maryland case, in holding the provision directory; the court saying that after diligent search, no case holding to the contrary had been found. In this case, like the one before us, the entire enacting clause was wanting. In this connection we may add that previous decisions of the same court, holding the pro-

vision that writs should run in the name of the state, was directory, were given weight. In our State a contrary holding will be found.

See *Forbes v. Darling*, 94 Mich. 621.

There are, however, cases which take a contrary view of the law, and adhere to the doctrine asserted by Mr. Cushing, and the late Mr. Justice Cooley, in his work on constitutional limitations, 6 Ed., p. 93, viz.:

"But the courts tread upon very dangerous ground when they venture to apply the rules which distinguish directory and mandatory statutes to the provisions of a constitution. Constitutions do not usually undertake to prescribe mere rules of proceeding, except when such rules are looked upon as essential to the thing to be done; and they must then be regarded in the light of limitations upon the power to be exercised. It is the province of an instrument of this solemn and permanent character to establish those fundamental maxims and fix those unvarying rules by which all departments of the government must at all times shape their conduct, and if it descends to prescribing mere rules of order in unessential matters, it is lowering the proper dignity of such an instrument, and usurping the proper province of ordinary legislation. We are not, therefore, to expect to find a constitutional provision which the people, in adopting it, have not regarded as of high importance, and worthy to be embraced in an instrument, which, for a time at least, is to control alike the government and the governed, and to form a standard by which is to be measured the power which can be exercised as well by the delegate as by the sovereign people themselves. If directions are given respecting the times or modes of proceeding in which a power should be exercised, there is at least a strong presumption that the people designed it should be exercised, in that time and mode only; and we impute to the people a want of due appreciation of the purpose and proper province of such an instrument, when we infer that such directions are given to any other end. Especially when, as has already been said, it is but fair to presume that the people in their constitution have expressed themselves in careful and measured terms, corresponding with the immense importance of the powers delegated, and with a view to leave as little as possible to implication."

There are some cases, however, where the doctrine of directory statutes has been applied to constitutional provisions, but they are so plainly at variance with the weight of author-

ity upon the precise points considered that we feel warranted in saying that the judicial decisions as they now stand do not sanction the application.

The question arose in Washington territory over a law fixing the seat of government, and the opinion of Cushing was quoted and followed. 1 Wash. Ter. 116. The case of Nevada v. Rogers, 10 Nevada 250, decided in 1875, did the same. An extended discussion of the subject will be found in that case, in support of the proposition that the language of the constitution should be literally followed.

The opinion concludes with the following pertinent and emphatic language:

“Our constitution expressly provides that the enacting clause of every law shall be ‘The People of the State of Nevada, represented in senate and assembly, do enact as follows.’ This language is susceptible of but one interpretation. There is no doubtful meaning as to the intention. It is, in our judgment, an imperative mandate of the people in their sovereign capacity to the legislature, requiring that all laws to be binding upon them shall, upon their face, express the authority by which they were enacted, and as this act comes to us without such authority appearing upon its face, it is not a law.”

The case of the State v. Patterson, 98 N. C. 662, is strong in its condemnation of the practice of treating constitutional requirements as directory. The case of Powell v. Jackson, 51 Mich. 130, is not in point, as the bill was duly and seasonably amended, if we may accept the statement of the briefs of the counsel and the syllabus.

The trend of the weight of the authority is in our opinion against the relator's contention.

It is urged with some plausibility that the insertion of this provision previous to the signature by the Governor is a sufficient compliance with the constitution, from which we understand the claim to be made that although the enacting clause was wanting when the bill came to the Governor it might have been supplied by him. But it is thought that this proposition is tenable only upon the assumption that the constitutional provision is directory merely. The Governor has no power to make laws. The legislative power is in no part vested in him, being

by Sec. 1. Article IV, of the constitution, vested in the senate and house of representatives. It is not the design of the constitution that he should legislate. His office is a check upon the legislature and he may compel a reconsideration of a bill by seasonably returning it to the appropriate house with his objections to it, and when the legislature has adjourned his neglect to sign it prevents it from becoming a law, but he has not the slightest power in framing the law. Indeed, it is a fundamental principal in American constitutions that the executive shall not make laws. The following language from the opinion in the case of *State of Nevada v. Rogers*, 10 Nev. 250, is apropos to this subject:

“Without the concurrence of the senate the people have no power to enact any law. Every person at all familiar with the practice of legislative bodies is aware that one of the most common methods adopted to kill a bill and prevent its becoming a law, is for a member to move to strike out the enacting clause. If such motion is carried the bill is lost. Can it be seriously contended that such a bill, with its head cut off, could thereafter by any legislative action become a law? Certainly not. The certificates of the proper officers of the senate and assembly, that such an act was passed in their respective houses, do not, and could not impart vitality to any act which, upon its face, failed to express the authority by which it was enacted.”

This being so, the only justification for the insertion of the enacting clause by the Governor is to be found in the assumption that it is a clerical omission of an unimportant matter and it might as well be held that one of the houses, or a clerk, or even the printer of the laws, might make the correction, as that the Governor might do it.

Some of the states have sustained laws without enacting clauses, but we do not know of one that has made their validity depend upon the unauthorized action of some officer or person. They have preferred to rest their action upon the well recognized distinction between mandatory and directory provisions. If the provision is mandatory that the law shall have a prescribed style and the making of laws is confined to the legislative branch of the government, it cannot be consistently held that omissions of essential parts of a law may be supplied and

corrections made by persons without authority; and the public necessities should be much greater than in the present case, before such a proposition should be seriously considered. If on the other hand there is warrant for treating the provision as directory, a much less dangerous precedent is established. But as has been shown, the weight of authority forbids it, and in our opinion it will be an unfortunate day for constitutional rights when courts begin the insidious process of undermining constitutions by holding unambiguous provisions and limitations to be directory merely, to be disregarded at pleasure. In the present case it will be much better that the legislature shall correct its mistake, than that the courts shall sanction the irregular correction.

We are therefore constrained to hold that the law under discussion is void, and in the certiorari case the order is affirmed, in that of Dettenthaler the conviction is reversed and no new trial ordered. The other justices concurred.

GROSVENOR v. DUFFY.

(Opinion filed September 18, 1899.)

Pure Food Law—Sale of Oleomargarine Colored to Imitate Butter—Constitutionality of Act.

The sale of oleomargarine colored with a harmless substance to imitate June butter, but which is sold and purchased as oleomargarine, is not in violation of section 3 of Act 118 of the Public Acts of 1897, being an act to prohibit and prevent adulteration, fraud and deception in the manufacture and sale of articles of food and drink.

Certiorari to review the action of the Washtenaw circuit judge in refusing the application of Elliot O. Grosvenor, Dairy and Food Commissioner, for mandamus to compel John L. Duffy, justice of the peace, to issue a warrant. Affirmed.

Smedley & Corwin, for relator.

John J. Speed and J. P. Lee, for respondent.

The relator presented to a justice of the peace a complaint in writing, charging that "Casper Rinsey did unlawfully offer and expose for sale, and did unlawfully sell and deliver to said Elliot O. Grosvenor, a large quantity, to wit, one pound of oleomargarine, which was then and there an article of food intended to be eaten by man, and which was then and there adulterated within the meaning of Act No. 193 of the Public Acts of Michigan for the year 1895, as amended by Act No. 118 of the Public Acts of Michigan for the year 1897, in this, to wit: that said oleomargarine was then and there an imitation of another article of food, to-wit: an imitation of a rich June butter; and said oleomargarine had been and was then and there colored, whereby inferiority was concealed and by which means it was made to appear better and of greater value than it really was, to wit, in this: That it was thereby made to appear like butter of a grade which was then and there of a greater value than the said oleomargarine; that the said oleomargarine was labeled 'oleomargarine' and stamped with the seller's name; and that the tub and wrapper which contained the same bore the name and address of the manufacturer and was distinctly labeled oleomargarine."

"Said complainant on his oath aforesaid, further says, that he called for oleomargarine, and that the said oleomargarine was sold to him as oleomargarine the same as to an ordinary customer, freely and without objection, and that for this reason he did not take the steps required by section 6, Act No. 154 of the Public Acts of Michigan for the year 1897."

The justice refused to entertain the complaint and issue a warrant, whereupon the relator applied to the circuit court for Washtenaw county for the writ of mandamus to compel the justice to issue a warrant and proceed to hear the case. The circuit court refused the writ and the case is brought to this court by certiorari for review.

Grant, C. J. (after stating the facts). The title of the act reads "An act to prohibit and prevent adulteration, fraud and deception in the manufacture and sale of articles of food and drink." Sec. 3, as amended by Act No. 118, Public Acts 1897, so far as it applies to this case, reads:

"An article shall be deemed to be adulterated within the meaning of this act: * * *

"Fourth—If it is an imitation of, or sold under the name of another article. * * *

"Sixth—If it is colored, coated, polished or powdered, whereby damage or inferiority is concealed, or if by any means it is made to appear better or of greater value than it really is.

"Seventh—If it contains any added substance or ingredient which is poisonous or injurious to health: Provided, That nothing in this act shall prevent the coloring of pure butter; And provided further, That the provisions of this act shall not apply to mixtures or compounds recognized as ordinary articles or ingredients of articles of food, if each and every package sold or offered for sale, bear the name and address of the manufacturer and be distinctly labeled under its own distinctive name, and in a manner so as to plainly and correctly show that it is a mixture or compound, and is not in violation with definition fourth and seventh of this section."

It is not claimed that the sale made by Rinsey violates subdivision seven. The act charged in the complaint is neither adulteration, fraud nor deception under any definition of these words to be found in any dictionary. Adulteration is "the act of corrupting or debasing, the act of mixing something impure or spurious with something pure or genuine, or an inferior article with a superior one of the same kind."

Bouv., L. D., 126.
Century Dictionary.

Counsel do not urge that it comes within the word "fraud" or "deceit." Neither is it urged that the article is made to appear of greater value than it really is. It is not claimed that the coloring matter used is in the least deleterious. The law permits its use to color butter. Counsel rely upon *People v. Snowberger*, 113 Mich. 86. That case is not in point. The gravamen of the offense there was that the article of food was damaged, inferior, its inferiority concealed, and it was made to appear of greater value than it really was.

This brings us to the only question we need to determine,

viz.: Is the title to the act broad enough to include the sale complained of? Would any person reading the title to the bill in the legislative journals, or elsewhere, suppose that the bill would make criminal an act which in itself was entirely harmless, honest, innocent and contained no element of wrong-doing? Or that it would change the well known definition of a word so as to include within it things which were in no sense akin to it and which could only be included in it by the most arbitrary legislative enactments? Would a manufacturer of, or dealer in butter or oleomargarine, be notified by the title that the harmless coloring of either was not only to be prohibited but to be punished by fine or imprisonment or both? There can be but one answer to these questions. When the legislature attempts to change definitions and to make acts criminal which per se are innocent and contain no element of wrong, there must be something in the title to show such purpose or object under Sec. 20, Art. 4 of the constitution. The title contains not even an intimation that an entirely innocent act is to be made a crime. It follows that this part of the act is void.

Bissel v. Wayne Probate Judge, 58 Mich. 237.

Northwestern M'fg. Co. v. Wayne Circuit Judge, Id., 381.

McKellar v. Detroit, 57 Mich., 158.

This statute is assailed as unconstitutional upon other grounds. This disposal of the case renders it unnecessary to discuss them. How far the legislature may go, under the police power inherent in the State in prohibiting and punishing acts which in themselves are perfectly harmless, would be an interesting subject of inquiry, but as it is not necessary to a disposal of the case we decline to enter upon it.

Judgment affirmed. The other justices concurred.

PEOPLE v. SKILLMAN.

(Opinion filed March 4, 1902.)

Pure Food Law—Section 5022 C. L. Construed—Action Against
Traveling Salesman.

A traveling salesman for a wholesale grocery firm, residing out of the State, took an order in this State for pure fruit jelly and forwarded the order to his employers. The order was filled with imitation fruit jelly. Information was filed against the salesman under section 5022 C. L., regulating the manufacture and sale of imitation fruit jellies. *Held*, That respondent was not guilty of violating the terms of the statute.

Error to the circuit court for Muskegon County. Fred J. Russell, judge.

Appeal of John Skillman from a conviction under the pure food law. New trial ordered.

Charles B. Cross, Prosecuting Attorney, for the people.

Elliott O. Grosvenor and Smedley & Corwin, for respondent.

Moore, J.: An information was filed against the respondent which, omitting the formal parts, reads as follows: "That one John Skillman heretofore, to wit, on the sixteenth day of September, A. D., 1901, at the city of Muskegon, in the county of Muskegon aforesaid, did unlawfully offer for sale and did sell to Albert Towle a large quantity, to wit: a certain compound under the name of Quince Jelly which was then and there adulterated within the meaning of the Act No. 193 of the Public Acts of the State of Michigan of the year 1895, as amended by Act No. 118 of the Public Acts of the State of Michigan of the year 1897, as amended by Act No. 117 of the Public Acts of the State of Michigan of the year 1899, in this, to wit: That said compound was then and there made and composed in part of glucose, starch and other substances, and was then and there colored in imitation of fruit jelly contrary to the form of the statute."

After the testimony was all in, a motion was made asking the judge, for various reasons, to direct a verdict in favor of

respondent. This motion was overruled. The case was submitted to the jury which returned a verdict of guilty.

A great many errors are assigned. We think some of them which we shall discuss are well taken, but as the case if ever tried again, will not present the same questions now presented by counsel we deem it unnecessary to pass upon all the questions argued by them in the briefs.

To sustain the case of the people testimony in substance as follows was introduced: It was shown the respondent had for some years been a traveling salesman in the employ of Reid, Murdock & Company of Chicago, that he solicited an order from Mr. Towle, a grocer in Muskegon, that Mr. Towle gave him an order for a case of assorted pure fruit jelly. Mr. Skillman did not have the goods with him, but reduced the order to writing in the presence of Mr. Towle, at his store, and forwarded it to the house in Chicago. It is as follows:

"Reid, Murdock & Co., Chicago.
Sept. 12, 1901.

Name: Albert Towle.

Town: Muskegon.

State: Michigan.

Ship by Barry Line.

Salesman: Skillman.

1 c P. F. Jelly Med Asst	100
1 c P. F. Jelly Med. Currant	100
60 days."	

"1 c P. F. Jelly Med. Asst." was explained to mean one case pure fruit jelly medium size assorted glasses. Mr. Towle testified Mr. Skillman claimed it was pure fruit jelly for which he took the order, and that was what he intended to buy. It was not shown that respondent had anything further to do with the transaction than as above stated. Later a case of goods was received from Reid, Murdock & Company and testimony was given tending to show that a tumbler of this jelly was sold to Mr. Bennett, inspector of the Dairy and Food Department of Michigan, and by him forwarded to the State Analyst, where it is claimed upon analysis it was shown to be a mixture of fruit juice, glucose, starch and coloring-matter. Upon the cross examination of Mr. Towle the following occurred:

"Q. Did you give Mr. Skillman more than one order for fruit jelly about this time? A. Well, he had two or three orders I think, two at least.

"Q. Two orders? A. One of them might have been ordered by mail.

"Q. Now you received two consignments of fruit jelly from the orders you had given to Mr. Skillman? A. I think so, yes, sir.

"Q. Upon which one of these orders did you receive this particular tumbler of jelly that you afterwards sold to Mr. Bennett? A. I couldn't say. The one that he bought was out of that order I think. (Witness pointing to order exhibited.)"

The defense claimed that the label "pure fruit jelly" placed upon the tumbler analyzed was put there by mistake. It was their claim that Reid, Murdock & Company dealt in two kinds of jelly, those made out of pure fruit and those made in imitation of pure fruit, and that when the imitation was sold in Michigan and certain other states their instructions were to label them "imitation," and that these instructions were furnished in writing to their agents, including the respondent, and they offered testimony tending to prove this claim. The written instructions were also offered in evidence, but with the testimony offered were excluded by the court.

Among other requests offered by the respondent was the following:

"Under the undisputed evidence in this case there is nothing to show that the respondent offered to sell any jelly in violation of any statute of this State, but, on the contrary, it is shown that respondent offered to sell strictly pure fruit jelly and sent such an order to Reid, Murdock & Company, of Chicago, Illinois, and the charge in the information for selling and offering to sell adulterated jelly is not sustained by the evidence, and your verdict should be not guilty."

The judge refused to give this request, but charged the jury, "It is recognized by the legislators and is a matter of common knowledge that many of the wholesalers that are doing business in Michigan are not residents of this State, so the legislature saw fit to make a law where a man solicited the sale of pure jellies, took an order for the sale of pure jellies, and in

response to that order and offer, a different class of goods was furnished, that the party should be guilty of violating this particular law. In other words, instead of that order or offer and the furnishing of goods delivered to the party by a party who might be a non-resident of the State, that it should relate to the man who actually made the offer, the man who actually took the order for the furnishing of this particular article. The people claim that this is the matter in which this defendant here is liable."

This statement of the law is sought to be justified by *People v. Snowberger*, 113 Mich. 86, and *People v. Grocer Co.*, 118 Mich. 604, 71 N. W. 497, 67 Am. St. Rep. 449, 77 N. W. 315. A reference to these cases will show that the respondent in each of them admitted making the sale of the goods. In this case the respondent denies that he sold any goods coming within the provisions of the statute. Giving the only interpretation to the testimony as it appears in the record which can be fairly given to it shows Mr. Towle was solicited to give an order for pure fruit jelly. He gave such an order. It was reduced to writing and in the writing the jelly was described as pure fruit jelly. As before stated the only connection of the respondent with the transaction as shown by the record is the taking of an order for an article not within the terms of the statute and forwarding it. This does not constitute an offense. It might as well be urged that if a traveling salesman takes an order for Michigan beet sugar and forwards a written order for such sugar, and if the house, instead of filling the order as written, sends glucose with a label upon the package containing it calling it Michigan beet sugar the salesman would be guilty of an offense. This we do not understand to be the law. Upon the case as made the circuit judge should have directed a verdict of not guilty. *People v. Howard*, 50 Mich. 242, 15 N. W. 101.

The verdict is set aside and a new trial ordered.

Long, J., did not sit. The other justices concurred.

THE PEOPLE v. MORSE.

(Opinion filed June 3, 1902.)

Pure Food Law—Sales by Agents—Criminal Responsibility for Acts of Principal.

1. A traveling salesman who in good faith takes an order for "pure pepper," which is filled by his principal with impure pepper, is not guilty of a violation of Public Acts 1895, No. 193, forbidding the sale of impure foods.
2. Public Acts 1895, No. 193 (Pure Food Laws) Sec. 17, providing that the taking of an order for future delivery of any of the articles covered by the "act shall be deemed a sale, within the meaning of the act," does not make an agent absolutely responsible for the acts of his principal in filling the orders taken by such agent, and an order by the agent which is filled by the principal as an entirety may be, under the act, a sale of impure food, as to the principal, and yet not such as to the agent.

Error to circuit court, Muskegon county; Fred J. Russell, judge.

John W. Morse was convicted of a violation of the pure food law, and he brings error. Reversed.

Underwood & Umlor, for appellant.

Chas. B. Cross, Prosecuting Attorney, and George S. Lovelace, Assistant Prosecuting Attorney, for the people.

Hooker, J.: The brief filed on behalf of the people states that the case is similar to that of *The People v. Skillman*, 8 Detroit Legal News, 1090, 89 N. W. 330, and in effect concedes that the case must be reversed if we adhere to our former decision.

The defendant took an order for some pepper, as and for pure pepper, to be shipped to a dealer in Muskegon, by defendant's principal, a wholesaler in Chicago. The pepper when sent was not pure.

It is insisted that the *Skillman* case is at variance with the weight of authority elsewhere, and contrary to our own cases, in which it is said that we have held that a guilty intent on

the part of a vendor, is not essential to an offense, under the pure food law (Public Acts 1895, No. 193). It is further said that in the decision in the Skillman case, section seventeen of the act must have been overlooked or considered unconstitutional.

The transaction in which the order was taken did not involve an immediate delivery of pepper, then and there present. It is not shown that the sample, if there was one, was the same as the pepper subsequently sent, or that it was in the least impure. If it be conceded that the agent acted in good faith, and we understand that it is not questioned, he took an order for pure goods, and in doing that certainly committed no offense. It is now urged that the exigencies of the enforcement of this law are such, that we should hold that this innocent and lawful action, may be made a crime by the subsequent act of the principal, either intentional or inadvertent, in departing from, instead of performing the contract which his agent had innocently made. We think this is not so, and we are also of the opinion that this does not necessarily do violence to section seventeen. This transaction, as an entirety, may have been a sale of impure pepper under the statute as to the principal, and not as to the agent. If the order had been taken, with knowledge on the part of the agent of a practice to send impure pepper on such orders, a different question would be presented.

The judgment is reversed and a new trial ordered.

Long, J., did not sit. The other justices concurred.

PEOPLE v. ROTTER.

(Opinion filed June 24, 1902.)

Food—Oleomargarine Act—Constitutional Law—Statutes—Title
—Object.

1. Public Acts 1901, No. 22, entitled "An act to prevent deception in the manufacture and sale of imitation butter," which in addition to forbidding sale of imitation butter, prohibits

- sales of colored oleomargarine, is not, on that account, open to the objection that the object is not expressed in the title, as required by Const. Art. 4, Sec. 20.
2. The act is not in contravention of the fourteenth amendment of the federal constitution.
 3. The act is a valid exercise of the police power.

Error to circuit court, Emmet county; Frank Shepard, judge.

George W. Rotter was convicted of selling colored oleomargarine, and brings error. Affirmed.

Smedley & Corwin, Sears, Meagher & Whitney (James F. Meagher and Kay Wood, of counsel), for appellant.

Horace M. Oren, Attorney General, and Matthew F. Guinon, Prosecuting Attorney, for the people.

Hooker, C. J.: At its last session, the legislature passed an act under the title, "An act to prevent deception in the manufacture and sale of imitation butter." Public Acts 1901, No. 22.

Section 1 of said act provides that:

"No person, by himself or his agents or servants, shall render or manufacture, sell, offer for sale, expose for sale, or have in his possession with intent to sell, any article, product or compound made wholly or in part out of any fat, oil or oleaginous substance or compound thereof, not produced from unadulterated milk or cream from the same, which shall be in imitation of yellow butter produced from pure unadulterated milk or cream of the same: Provided, That nothing in this act shall be construed to prohibit the manufacture or sale of oleomargarine in a separate and distinct form, and in such manner as will advise the consumer of its real character, free from coloration or ingredient that causes it to look like butter."

Section 2 prescribes a penalty for the violation of the act.

The defendant was a grocer in Emmet county, and is shown to have sold a package of oleomargarine, which by an analysis was proven to have contained artificial coloring matter, and that said oleomargarine was not made wholly from unadulterated milk or cream from the same, and that it was made in imitation of yellow butter, produced from unadulterated milk or cream from the same. The court was asked to direct a verdict or not guilty upon the grounds:

- 1st. That the object of the act was not expressed in the

title, as required by section 20 of article 4 of the constitution of this State;

2d. That the act violates the fourteenth amendment of the constitution of the United States, and article 6, section 32, of the constitution of this State;

3d. That it was not within the police power of the State.

The evidence conclusively shows that no deception was used in selling the oleomargarine, and there is nothing to indicate that there was any harmful ingredient therein, but that, on the contrary there was not such ingredient. The defendant was convicted, and the case is here on exceptions before sentence.

It is contended that the title to the act indicates that the act was designed to prevent deception in the manufacture and sale of imitation butter, while the act attempts to go further and prevent all sales of such colored oleomargarine.

If oleomargarine colored yellow, closely resembles yellow butter, made from milk or cream, it cannot reasonably be said not to resemble or imitate yellow butter. Butter is a well known commodity. From time immemorial it has had but one origin, viz.: from the churning of milk or cream. Whatever may be said of the possibility of making a product from other compounds than milk or cream that shall closely resemble or be chemically identical with butter, the world has but one understanding of what is meant by the word "butter," and we must assume that such is the sense in which our legislature used the term. Compiled Laws, Sec. 50, Sub. 1.

A fair inference from this statute is that the legislature undertook to prevent deception, by preventing the sale of any yellow oleomargarine, and it undertook to accomplish this by the most effective means, viz.: by prohibiting the coloring of oleomargarine yellow, thereby avoiding the embarrassment which would otherwise arise from the necessity of proving in each case, that deceit was used in selling it, as and for butter. We think this is fairly within the title, whatever must be said of the other points raised. We are referred to the case of *N. W. Mfg. Co. v. Chambers*, 58 Mich. 381, 25 N. W. 372, 55 Am. Rep. 693, as conclusive upon this question, in which case it is said that "all that could be done under such a title would be to prohibit and prevent sale of such articles under

false pretenses." We are of the opinion that this language is too restrictive, and that it is at variance with the settled doctrine in this State, that any provision, naturally calculated to accomplish the object expressed in the title may be included in the act.

See:

Soukup v. VanDyke, 109 Mich., 681.

People v. Worden Grocer Co., 118 Mich., 607.

The case cited was rightly disposed of upon another ground, and it is possible that the language above quoted should be considered a dictum. Moreover, the cases are distinguishable for whereas, that act attempted to prevent all sales of imitation butter, and was therefore perhaps inconsistent with the title, which apparently contemplated lawful sales, the statute under consideration in the present case, does not prohibit sales of oleomargarine, which is not tainted with the prohibited ingredients.

It is unnecessary to discuss the other points at length for the reason that the uniform trend of judicial opinions is that such laws are valid:

State v. Meyers, 42 W. Va. 825; 35 L. R. A. 844.

New Hampshire v. Marshall, 1 L. R. A. 51.

Powell v. Penna, 127, U. S. 678.

People v. Armsberg, 105 N. Y. 113.

Butler v. Chambers, 36 Minn. 69.

People v. Worden Grocer Co., 118 Mich. 604.

People v. Armsberg, 105 N. Y. 123.

State v. Crescent Creamery Co., 86 N. W. 107.

State v. Ball, 46 Atl. Rep. 50

Commonwealth v. Van Dyke, 13 Pa. Sup. Ct. Rep. 484.

Commonwealth v. McCann, 14 Pa. Supt. Ct. Rep. 221.

Armour Packing Co. v. Snyder, 84 Fed. Rep. 136.

Cap. City Dairy Co. v. State, 22 Sup. Ct. Rep. 120.

Wright v State, 41 Atl Rep. 795.

We are of the opinion that the legislature had the power to pass this law, and its wisdom of policy is not for our consideration.

The judgment is affirmed and the court directed to sentence the defendant.

Long, J., did not sit. The other justices concurred.

PEOPLE v. PHILLIPS.

(Opinion filed Sept. 17, 1902.)

Food—Adulteration—Statutes—Oleomargarine—Yellow Butter.

1. The phrase "yellow butter," is used in Act No. 22, Acts 1901, making it an offense to sell or offer for sale oleomargarine colored in imitation of "yellow butter" made from pure milk or cream, of the same, means any butter produced from pure milk or cream thereof having a "perceptible shade" of yellow.

Error to circuit court, Kalamazoo county; John W. Adams, judge.

John W. Phillips was convicted of selling oleomargarine, in violation of Act No. 22, Acts 1901, and he brings error. Affirmed.

Frank E Knappen and E. M. Irish, for appellant.

Sheridan F Master, Prosecuting Attorney, and Dallas Boude-man, for the people.

Moore, J.: The respondent was convicted of having on hand with intent to sell, and offering for sale oleomargarine, colored in imitation of yellow butter, contrary to the provisions of Act No. 22 of the legislature, passed at the session of 1901.

It is claimed by respondent this law is unconstitutional and is an invalid law. That question was decided in the very recent case of *People v. Rotter*, against the contention of respondent, and need not, be discussed here. It is urged as a matter of defense, and we quote from the brief of counsel, "that the statute is only aimed against the imitation of a substance which the legislature recognizes as yellow butter, and

1. The court should take judicial notice that all butter with a trace of yellow in it is not the yellow butter of commerce.

2. That if this is not true as a proposition of judicial notice, and the court cannot know it, then the respondent should have been allowed to prove, if he could, that there was such a usage of commerce.

3. That the statute is vague and indefinite in not defining the elements of the statutory crime it attempts to carve out of

an act innocent per se, in that it gives no standard for determining what the color of yellow butter is that is not to be imitated."

The trial judge charged the jury upon that branch of the case as follows:

"It is not necessary in this case for the people to have proved that the respondent himself colored the oleomargarine if you find beyond a reasonable doubt that it was colored. The offense is just as complete, so far as this is concerned, if the respondent purchased oleomargarine colored, as above indicated. The offense as above stated consists of having the oleomargarine colored as before indicated, in his possession, with intent to sell the same, or in exposing it for sale; and if the respondent sold it in the same condition as he bought it, there would be no defense in this case. The respondent, gentlemen of the jury, is not charged in this information with selling this article; and if you find beyond a reasonable doubt he sold it as claimed by the people in the testimony offered, you may consider this fact on the question of whether respondent had or did not have the article in his possession for the purpose of selling it. And you must not consider it for any other purpose. If you find beyond a reasonable doubt that respondent did sell the article mentioned in the information to the parties claimed by the people, that would satisfy the statute upon the question of intent to sell. It is not necessary in this case to entitle the people to a conviction, that the oleomargarine should have been colored to represent any particular kind of yellow butter. That is, such yellow butter as the statute mentions, and as I have indicated to you the statute mentions. If the coloring was put into it, and by using such coloring the oleomargarine was in imitation of light yellow butter, such as the statute mentions, that is yellow butter produced from pure, unadulterated milk or cream from the same, the offense is committed just the same, as if it had been colored to represent darker yellow butter. If you find it to have been oleomargarine and was colored in such a manner as to be in imitation of any kind of yellow butter, that would satisfy the statute upon the requirement of the question of color. Yellow butter I define to be any butter produced from pure, unadulterated milk or cream of the same having a yellow color.

"It is necessary in order for the jury to convict the respondent, for you to find beyond all reasonable doubt that the article in the package sold was colored in imitation of yellow butter produced from pure, unadulterated milk or cream of the same. If you find beyond a reasonable doubt under the testimony in this case that there was some coloring matter in this article

still if you find that there was not enough coloring matter in this article to cause it to look like yellow butter having a perceptible shade of yellow, said butter having been produced from unadulterated milk, or cream from the same, then you must acquit. But if you find beyond a reasonable doubt there was coloring matter in said article and sufficient coloring matter in said article and sufficient coloring matter therein to make it look like yellow butter, having any perceptible shade of yellow, said butter having been made from unadulterated milk or cream from the same, that would be sufficient so far as the requirement of the statute upon the question of coloration is concerned."

We think this was a proper construction of the language used in the statute.

The conviction is affirmed and the case remanded for further proceedings.

Long, J., did not sit. The other justices concurred.

PEOPLE v. JENNINGS.

(Opinion filed April 7, 1903.)

Adulteration of Food—Omission of Ingredients—Coloring Matter—Remarks of Court.

1. There not having been incorporated in the pure food law of 1895 (Public Acts of 1895, p. 358, No. 193), any specific formula for the manufacture of lemon extract, it is proper to resort to the United States Pharmacopoeia formula to determine of what lemon extract consists.
2. The pure food law of 1895 (Public Acts of 1895, p. 358, No. 193), is not intended to prevent manufacturers of articles of food from improving the same, so long as no infringement of the law or spirit of the act defining adulteration takes place.
3. The provisions of Comp. Laws, Sec. 5012, that an article shall be deemed adulterated, "second, if any inferior or cheaper substance or substances have been substituted wholly or in part for it; third, if any valuable or necessary constituent or ingredient has been wholly or in part abstracted from it"—should be read together, and the provision first recited construed as prohibiting the substitution for an essential ingredient of any cheaper or inferior substances.

4. Comp. Laws, Sec. 5012, declaring that an article shall be deemed adulterated, "sixth, if it is colored * * * whereby damage or inferiority is concealed, or if by any means it is made to appear better or of greater value than it really is," does not preclude the use of coloring matter not injurious to health in any way.
5. It is improper for the court to refer to expert testimony as "boughten testimony."

Exceptions from circuit court, Muskegon county; Fred J. Russell, judge.

Charles W. Jennings was convicted of violating the pure food law, and brings exceptions. Reversed.

Charles A. Blair, Attorney General, and Charles B. Cross, Prosecuting Attorney, (Cross, Lovelace and Ross, of counsel), for the people.

Knappen, Kleinhans & Knappen and L. N. Keating, for defendant.

Mortgomery, J. This is a prosecution under the Pure Food Law, so called. The defendant was convicted under an information charging him with selling a compound as a lemon extract which was adulterated within the meaning of Act No. 193, P. A. 1895, and was a compound in imitation of extract of lemon. The respondent was convicted and brings the case up on exceptions before sentence.

The evidence on the trial introduced by the defendant tended to show that lemon oil contains from three to ten per cent citral, so called, and upwards of ninety per cent of so called turpenes; that these turpenes represent the oil property; that they are in reality the oil itself freed from the citral; that citral is the principal flavoring and odor-bearing property of lemon oil; that the tendency of turpenes in the oil of lemon is to deteriorate or become rancid by long standing, and that because of this the extract of spirits of lemon in which turpenes appear in usual quantities become turpentiney, both in smell and taste, and that for this reason it is undesirable to have turpenes present; that the turpenes have a biting taste, easily developing a turpentine taste, not the true flavor of the lemon fruit. There was also testimony tending to show that this

fact created a demand for turpeneless oils and that turpeneless lemon oils had been manufactured and sold commercially for a considerable time.

On the part of the prosecution the testimony of the chemist of the Pure Food Department was to the effect that taking as a standard of extract of lemon the spirits of lemon as defined by the United States Pharmacopoeia formula that the extract produced by the respondent showed no lemon oil present. It further appears that spirits of lemon made according to the pharmacopoeia formula would contain from 25-100 to 35-100 of one per cent of citral. It also appeared that 30 per cent of alcohol appeared in the product made by respondent, and that according to the pharmacopoeia formula 80 per cent was used, and that it cost less to make the extract using but 30 per cent of alcohol than if 80 per cent was used. It was also shown that a trace of coal tar dye was found in the extract made by respondent, but it was conceded that there was nothing whatever injurious in the extract as prepared by Mr. Jennings. The extract sold by respondent was made by what is known as the shaking out process, the purpose being to make an extract that contains no oil and as little alcohol as possible, a product that simply contains the flavoring properties of the lemon oil without the turpenes. This system has been employed by Mr. Jennings and by other manufacturers for the past three years; and it is claimed that all the elements and properties of lemon oil remained except the turpenes, and the testimony tended to show that the complete flavoring qualities are extracted by this process.

The circuit judge charged the jury as follows:

"In 1895 the Legislature of this State, thought it wise to pass a law relative to the adulterations of food and food products. Perhaps there may have been some amendments since that time, but that was the foundation of the law. That law covers lemon extract as it covers all other products that are sold on the market. It seems at the time the law was passed and since that time there hasn't been—there isn't incorporated within that law any special formula for the manufacture of lemon extract. Now, we can hardly say, gentlemen of the jury, that at the time of the passage of that law that the Legislature didn't have some recognized and defined standard by which these

essences or extracts should be governed or controlled. I think it would be hardly fair to the Legislature to claim that there wasn't a standard they had in their mind at that time, and for the purposes of this case I will instruct you gentlemen, that at that time and at this time this standard that appears here in the United States Pharmacopoeia is the standard recognized by the legislators of this State and the one to which—the one that is in force so far as it applies to the pure Food Law of this State with reference to that particular product. And if this lemon extract is manufactured in conflict with that formula as I shall hereafter call your attention to it, and you should find from the evidence, why it would be your duty to convict the defendant here.

“By that formula it appears that it is necessary to have five per cent of lemon oil in the lemon extract and that lemon oil shall be cut by a sufficient quantity of alcohol to perform that act. Of course, you know that that means in common parlance it should dissolve the oil. In addition to that, as the evidence tends to show in this case, after those things are put together, the fluid, whatever it might be, would be nearly the color of water. As coloring there may be or should be five per cent of lemon rind, and those ingredients when added together would be lemon extract, and that, gentlemen, will be the standard as applied to the Pure Food Law of this State. Now, gentlemen, I don't mean by that statement that lemon extract cannot be manufactured by any other process except by that to which I have called your attention. I don't mean that. It is the claim of the defendant here that he has discovered a process by which he can manufacture lemon extract containing all of the qualities that lemon extract manufactured according to that formula would possess and not have entirely all of the ingredients in the first instance that are provided in the formula. And as I view this case, gentlemen, that is one of the important propositions in connection with this case—that, and the question of coloring—in the judgment of the court is the case, and that all of the testimony in the case here revolves itself about those two propositions.

“It is the claim of the defendant, as I say, he has discovered a process by which he can produce in this lemon extract all the qualities that would be produced by adding alcohol and lemon oil together, and that manufacturing it by that means he produces it chemically by taking a larger quantity of lemon oil and extracting certain parts of it. Now, gentlemen, if you find and are satisfied by the evidence in this case that after this lemon extract was manufactured as defendant here claims he did manufacture it possesses all the qualities in strength and otherwise that it would possess if manufactured according to this formula, he is not guilty under this law. That is, he

is not guilty of manufacturing an impure article, unless there are certain other articles that enter into the case to which I call your attention. As I say, in the first instance, it is claimed that according to the formula it should be alcohol and five per cent of lemon oil. Now if by some other process he can manufacture from the lemon oil and alcohol a product that would contain all of the elements that these two elements would contain if so mixed, he would not be guilty so far that would be lemon extract except the color of it.

"It is conceded here by all parties in interest, I think, that the only object of the lemon peel is to produce coloring. But there is another element to which the prosecuting attorney, has called our attention. The evidence tends to show, gentlemen, that if this product is produced as claimed here on the part of the defendant, that after production by this process that the product will be nearly white. As I say, if it contained all of the elements of lemon extract, I don't think he would be guilty under this law, and if you are so satisfied, of course, at that point it would be your duty to find a verdict of not guilty unless there is some other matter in which he has violated this law.

"There is another provision of this Pure Food Law that provides that ingredients shall not be colored. In this case it appears that after this fluid substance is produced which he claims is just the same as produced under this formula, that he desires to change it to a lemon color. In other words, he puts in an ingredient which he claims would produce the same effect as this lemon rind. What is the object, gentlemen, or what was the object of Mr. Jennings adding this color? If the object was by any means to make it appear better or of greater value than it really is; if that was the object in adding that product, of course it is your duty without any question to find this defendant guilty, because he hadn't any right to add that kind of a product or any other kind of a product to this fluid which he had produced and sell it for lemon extract, because that is a direct violation of one of the provisions of this Pure Food Law."

We think this charge presents fairly three questions for consideration: First, whether the pharmacopoeia formula is to be considered as defining lemon extract; second, if so, whether an omission of ingredients not essential to its purposes as a food product is a violation of the statute; third, whether the instruction relative to the addition of coloring matter should be sustained.

The statute defining what shall be deemed adulteration, so

far as it relates to this case, declares that an article shall be deemed adulterated when: "First, if any substance or substances have been mixed with it, so as to lower or depreciate or injuriously affect its quality, strength or purity; second, if any inferior or cheaper substance or substances have been substituted wholly or in part for it; third, if any valuable or necessary constituent or ingredient has been wholly or in part abstracted from it; fourth, if it is in imitation of, or is sold under the name of another article; * * * sixth, if it is colored, coated, polished or powdered whereby damage or inferiority is concealed, or if by any means it is made to appear better or of greater value than it really is; seventh, if it contains any added substance or ingredient which is poisonous or injurious to health." Compiled Laws, Sec. 5012.

We are agreed with the circuit judge that in referring to articles of food and to protect the users thereof the legislature must have had in view some standard, and as lemon essence or lemon extract had therefore acquired a well-defined meaning we incline to the view that it is proper to resort to the pharmacopoeia formula for the purpose of determining what lemon extract consists of. Does it follow from this that the legislature intended to prohibit improvement in the manufacture of lemon extract? If a means should be discovered by which a larger percentage of the flavoring quantity of the lemon might be extracted would it be an infraction of this law that the manufacturer should use such larger proportion of the essential ingredient of the lemon extract? We think not. We think it is open to manufacturers to improve a common article of food so long as no infringement of the law or spirit of the act defining what shall be deemed adulteration takes place. According to the proofs offered by the defendant it is very clear in the present case no substance or substances have been mixed with this extract so as to lower or depreciate or injuriously affect its quality, strength or purity.

As to the second condition which amounts to adulteration the case is not so clear. This provides that if any inferior or cheaper substance or substances have been substituted wholly or in part for it, that it shall amount to adulteration. We think, however, this provision should be read in connection

with the succeeding one, to-wit: "If any valuable or necessary constituent or ingredient has been wholly or in part abstracted from it." So construed the provision prohibiting the substitution of any inferior or cheaper substance, wholly or in part, for it means the substitution for an essential ingredient of such cheaper or inferior substance. Now if it be a fact, as the testimony on the part of the respondent tends to show, that it is a positive advantage to exclude the turpene wholly from the extract and to lessen the quantity of alcohol used, then the essential ingredients of lemon extract have not had substituted for them anything inferior or cheaper. We are aware that this view of the law may make it more difficult to establish the individual case, but as the statute is a penal statute it should receive a strict construction.

It follows from the views above expressed that the instruction of the learned circuit judge was erroneous inasmuch as the jury were told in effect that if any ingredient of lemon essence as defined by the pharmacopoeia was wanting in this extract sold by the respondent that there should be a conviction. We think the instruction should have been that if the lemon extract sold by respondent contained all the ingredients and in quantities such as prescribed by the pharmacopoeia which are adapted to use as food, and that nothing was eliminated except such ingredients as could be dispensed with without injury to the product as a food product there was no violation of the statute.

The only other provision of the statute involved is the sixth, which in effect prohibits coloring the article produced whereby damage or inferiority is concealed. The instruction upon this branch of the law was also erroneous if we are correct in our view of the main question. The elimination of non-essential ingredients from the extract certainly does not show damage or inferiority, and as the conceded facts are that the coloring matter employed was not injurious to health in any way this provision has no application.

The other questions discussed do not require special mention. It may be noted in passing that the circuit judge in referring to the testimony of expert witnesses spoke of it as boughten testimony. We think this expression was unfortunate. While

it is proper for the jury to take into account the fact that expert witnesses are employed at an extra compensation paid them, the implication that the extra compensation necessarily amounts to a purchase of their testimony is hardly warranted; while the jury may consider this fact as bearing on their credibility, it is not proper that the court should intimate an opinion of that character.

The judgment should be reversed, and a new trial ordered.

The other justices concurred.

BENNETT v. CARR.

(Opinion filed July 14, 1903.)

Pure Food Law, Act 22, P. A. 1901, Construed—Sale of Yellow Oleomargarine.

Act No. 22 of the Public Acts of 1901 prohibiting the sale of oleomargarine except where it is "free from coloration or ingredient that causes it to look like butter." does not prohibit the sale of oleomargarine whose color is natural, genuine, and not an imitation, and the ingredients themselves naturally produce the color.

The term "ingredient," used in Act 22, Public Acts of 1901, does not refer to the ingredients essential to produce the article as defined by the legislature, but to an ingredient used to produce color.

Certiorari to the Circuit Court for Muskegon county, Fred J. Russell, judge to review an order denying the petition of John R. Bennett for mandamus to compel John M. Carr to issue a warrant. Order affirmed.

Charles A. Blair, Attorney General, and Cross, Lovelace and Ross, for relator and appellant.

Smith, Nims, Hoyt and Erwin for defendant and appellee.

Grant, J.: Relator is the inspector of the State Food and Dairy Department. On the 24th day of February, 1903, he made complaint before the defendant, a justice of the peace of the county of Muskegon, charging one Martin Aamondt with having sold one pound of oleomargarine contrary to Act No. 22 of

the Public Acts of 1901. The respondent refused to entertain the complaint and issue warrant, on the ground that the complaint stated no offense under the provisions of said act, and that said act is unconstitutional and void. Relator thereupon applied to the circuit court for the county of Muskegon for the writ of mandamus to compel the respondent to issue said warrant, and proceed with the examination. The circuit court sustained the action of the respondent, and the case is now before us for review upon certiorari.

The statute in question reads as follows:

"Section 1. No person, by himself or his agents, or servants, shall render or manufacture, sell, offer for sale, expose for sale, or have in his possession with intent to sell, any article, product or compound made wholly or in part out of any fat, oil, or oleaginous substance or compound thereof, not produced from unadulterated milk or cream from the same, which shall be in imitation of yellow butter produced from pure unadulterated milk or cream of the same: Provided, That nothing in this act shall be construed to prohibit the manufacture or sale of oleomargarine in a separate and distinct form, and in such manner as will advise the consumer of its real character, free from coloration or ingredient that causes it to look like butter." The complaint charges Mr. Aamondt with unlawfully selling one pound of oleomargarine "made wholly or in part of fat, oil, or oleaginous substance or compound thereof, as follows, to wit:

Water	11.75 per cent
Butter fat	1.34 per cent
Beef fat, lard and cottonseed oil..	79.24 per cent
Salt and other mineral matter....	4.54 per cent
Curd	3.13 per cent

Said article, product or compound not being then and there butter produced from unadulterated milk or cream from the same, and being then and there in imitation of yellow butter produced from unadulterated milk or cream from the same, and not being then and there oleomargarine in a separate and distinct form and in such manner as would advise the consumer of its real character, free from coloration or ingredient that would cause it to look like butter, but that the said oleomargarine was then and there of a yellow color in imitation of butter, said color not being then and there produced by the addition of any

artificial coloring matter, but said color being produced solely by the said ingredients therein contained, the said ingredients hereinbefore set forth, having been selected and used in the manufacture of said oleomargarine in such manner and in such quantities and proportion as to produce the oleomargarine that was then and there in imitation of yellow butter produced from unadulterated milk or cream from the same, contrary to the form of the statute," etc.

The oleomargarine so purchased was manufactured in the city of Chicago, State of Illinois, by one Moxley, a resident of said city, and was sold by said Moxley to said Aamondt in the usual course of trade, and by said Aamondt was sold in the usual course of retail trade, in the same form and condition and in the original package, in which it was received by Aamondt from Moxley.

It is conceded that this oleomargarine has a yellow color similar to butter, but the color is not produced by any artificial coloring substance or ingredient used for the purpose of coloration, but is produced solely by the selection and use, in proper proportions, of the substantial, recognized, legal and necessary ingredients of commercial oleomargarine.

Does the complaint state an offense covered by the statute? The answer depends upon the construction to be given to the statute. The relator contends that the statute covers all products which look like yellow butter, and that it is immaterial whether such color is produced by some ingredient introduced for the purpose of causing the product to look like butter, or whether such color is produced by authorized and legal constituent food ingredients. The respondent contends that the statute is aimed only at the use of ingredients used solely for the purpose of producing the yellow color, and does not prevent the manufacture of an article whose color is natural, genuine and not an imitation. Penal statutes must be construed strictly and cannot be extended by construction beyond the intent of the act as expressed on its face. The conditions existing at the time the statute was enacted, and the mischief to be remedied, are important factors in construing penal statutes. Two acts covering the same subject must be construed as in *pari materia*, and, if possible, effect given to both. These are

elementary rules of construction. At the time the statute in question was enacted the only method in use in causing oleomargarine to look like yellow butter was the introduction of some extraneous coloring matter. This was the mischief to be remedied. We clearly so understood in *People v. Rotter*, 9 D. L. N. 284; 91 N. W. Rep. 167, where, speaking through Chief Justice Hooker, we said of this statute: "The statute under consideration * * * does not prohibit sales of oleomargarine which is not tainted with the prohibited ingredient."

See also *People v. Phillips*, 9 Id. 393; 91 N. W. Rep. 616.

The legislature has defined oleomargarine which may be manufactured and sold in this State. Sec. 6, Act No. 147, Public Acts of 1899. It is conceded that the respondent has complied with this act. If we give the enlarged construction to the statute now in question, as urged by the relator, it follows that the legislature has prohibited the manufacture and sale of a valuable article of food, the natural color of which resembles yellow butter (itself almost universally colored by extraneous matter). The manufacturer of such a product, if he sold it at all, would be compelled to introduce some coloring matter so as to make it look unlike the yellow butter of commerce. These two statutes must be construed together. The article sold by the respondent is clearly authorized by the first act. The latter act does not in terms prohibit its sale and manufacture. It does prohibit the use of any substance for the sole purpose of producing yellow color. The use of such coloring matter was the sole mischief then known to exist, and the only danger to be apprehended and guarded against.

A similar statute was passed in New Jersey, and the like contention was made to support a conviction, and the court said: "To construe the statute so broadly would render it practically prohibitive of the sale of all oleomargarine; for, of course, the compound must derive color from its ingredients, and such a prohibition has manifestly not been declared."

Ammon v. Newton, 14 At. Rep. 610; 50 N. J. 548.

McCann v. Commonwealth, 48 At. Rep. 470; 198 P. A. St. 509.

Our statute is copied verbatim from that of Massachusetts. The Supreme Court of that State, in a case just decided, has held that the statute applies only to extraneous substances or ingredients which cause the product to look like butter, and not to cases where the ingredients themselves naturally produce the color.

Commonwealth v. Himberg, ——— ———.

The Supreme Court of the United States so held in regard to the same statute.

Plumley v. Commonwealth, 155 U. S. 461.

The term "ingredient," used in the statute, does not refer to the ingredients essential to produce the article as defined by the legislature, but to an ingredient used to produce color. The maxim *noscitur a sociis* applies.

Under this disposition of the case it becomes unnecessary to discuss any constitutional question.

The order is affirmed.

The other justices concurred.

PEOPLE v. HARRIS.

(Opinion filed December 1, 1903.)

Food—Corn Syrups—Glucose.

1. Public Acts 1903, No. 123 forbids the sale of cane syrup or beet syrup mixed with glucose, unless the package containing the same be distinctly branded "Glucose Mixture" or "Corn Syrup," with the name and percentage of each ingredient contained therein plainly stamped thereon. Held, That a sale of syrup made of 90 per cent pure corn syrup and 10 per cent cane syrup, labeled "Victor Corn Syrup," and truthfully stating the ingredients composing it, is not in violation of the statute, in that it is not branded "Glucose, 90 per cent, and cane syrup 10 per cent."

Exceptions from circuit court, Kent county; Willis B. Perkins, Judge.

Benjamin S. Harris was convicted of violating the "Act in relation to the sale of corn syrup" and brings exceptions. Reversed.

Respondent was prosecuted and convicted for a violation of Act No. 123 of the Public Acts of 1903, entitled, "An act in relation to the sale of corn syrup," and reading as follows:

"Sec. 1. No person shall offer or expose for sale, have in his possession with intent to sell, any cane syrup, beet syrup, or glucose, unless the barrel, cask, keg, can, pail or package containing the same be distinctly branded or labeled with the true and appropriate name; nor shall any person offer or expose for sale, have in his possession with intent to sell, or sell any cane syrup or beet syrup mixed with glucose unless the barrel, cask, keg, can, pail or package containing the same be distinctly branded or labeled 'Glucose Mixture' or 'Corn Syrup' in plain Gothic type not less than three-eighths of an inch square, with the name and percentage by weight of each ingredient contained therein plainly stamped, branded or stenciled on each package in plain Gothic letters not less than one-quarter of an inch square. Each and every package of syrup either simple or mixed shall bear the name and address of the manufacturer. Such mixture or syrups shall have no other designation or brand than herein required that represents or is the name of any article which contains a saccharine substance; and all brands or labels required shall be an inseparable part of the general or distinguishing label, and that the general or distinguishing label shall be that principal and conspicuous sign under which it is sold.

"Sec. 2. Whoever shall do any of the acts or things prohibited, or neglect or refuse to do any of the acts or things required by this act or in any way violate any of the provisions, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail for a period of not less than thirty days nor more than ninety days, or by both such fine and imprisonment in the discretion of the court."

The complaint charges him with the unlawful sale of "a two-pound can, two pounds, of a certain article, product and compound, to-wit: corn syrup, so-called, made wholly or in part of cane syrup and glucose as follows, to-wit: Cane syrup ten per cent, and glucose ninety per cent, said can containing said article, product and compound sold as aforesaid not being then and there stamped, branded or stenciled with the name and percentage by weight of each ingredient contained therein, to-wit: cane syrup ten per cent, glucose ninety per cent; but said article, product and compound sold as aforesaid was then and there stamped and branded as follows, to-wit: 'Cane syrup ten

per cent, corn syrup ninety per cent,' against the form of the statute in such case made and provided, and against the peace and dignity of the people of the State of Michigan."

Respondent moved to quash the complaint and warrant for two reasons: (1) they charged no offense; (2) the act authorizes the use of the words "Corn Syrup," instead of Glucose in the statement of the ingredients placed upon the can. The motion was overruled and the case proceeded to trial upon the following agreed facts:

1. The respondent sold on October 12, 1903, at the city of Grand Rapids, Michigan, the can of Victor Corn Syrup in question.

2. The label on said can of syrup sold, as stated in the complaint, contains the formula of contents of said can as follows: "Corn syrup, ninety per cent; cane syrup, ten per cent;" and is not branded or labeled as the people claim it should be, "Glucose, ninety per cent; Cane Syrup, ten per cent."

3. The Victor Corn Syrup in question is in fact composed of ninety per cent syrup made from corn, commercially called Glucose or Corn Syrup, and ten per cent of cane syrup.

4. Glucose contained in the Victor Corn Syrup in question is in fact a pure syrup made entirely from corn.

5. Grape Sugar, commercially known as Glucose, either solid or liquid, is a generic name for starch sugar as distinguished from the cane sugar.

6. A simple beet syrup is evidently the same as the simple cane syrup.

7. Originally, Glucose, which was first made from grapes, was, for the reason that starch sugars are identical with the sweet principle of grapes, termed, for a great many years, and until lately was known chemically and commercially as Grape Sugar.

8. Commercially, Glucose is now made in this country entirely from corn, although abroad it is still made from potatoes.

9. The consuming public does not understand that Glucose is a syrup made entirely from corn. On the contrary, it is claimed by the respondent that the public generally supposes Glucose to be an inferior product made from animal fat, or a product of the glue factory, while they do recognize corn syrup as being made from corn.

10. Glucose as made from corn and contained in Victor Corn Syrup in question, is entirely harmless and recognized generally by highest authorities as a valuable food product.

11. Glucose made from corn, in fact, costs at the present time, owing partially to cost of raw material, more to produce, and sells for more in the markets, than manufactured cane syrup.

The court directed a verdict of guilty.

Grant, J.

Does the statute require respondent or manufacturers to state upon their labels that corn syrup consists of ninety per cent glucose? No such statute has come under the decision of other courts. It is a new question, and must be determined upon general principles of construction.

It is conceded that the label states the exact facts; that the article is made of ninety per cent pure corn syrup and ten per cent cane syrup; that it deceives no one; that Victor Corn Syrup is a valuable and pure article of food, and that the ingredient ninety per cent corn syrup "is entirely harmless, and recognized generally by the highest authority as a valuable food product," whether it be called glucose or corn syrup. The term "Glucose" is obnoxious to many, if not a majority, of the public, and is misunderstood by them. They do not know that in this country glucose is now made entirely from corn, and that the terms glucose and corn syrup are commercially synonymous. This fact is known to the manufacturers and perhaps the dealers. A prejudice exists against the term "glucose" because that material can be manufactured from many substances, including sawdust. In Europe it is made mainly of potatoes. By many it is associated with a glue factory. In this country corn syrup and glucose are not only commercially synonymous terms, but it is stated by counsel for respondent that they are permitted to be so used in all the other states. We have not verified this statement, but as it is not challenged we assume it to be correct.

We have, therefore, a valuable and healthful product, made from two pure, valuable and healthful ingredients, advertised and placed upon the markets for what it really is, without any deception, fraud or chance to injure the public in any way. Yet the contention on behalf of the people is that the legislature has enacted that in putting this product upon the market its manufacturers and sellers must attach to it a name obnoxious to the public, and, in fact, calculated to deceive them. When it is claimed that such innocent acts are made *malum prohibitum*, there must be either an express provision of the statute so declaring, or the language of the statute must leave no other conclusion reasonable. This statute does not expressly require it.

The argument on behalf of the people in "that glucose made from corn is glucose, the simple syrup mentioned in and intended to be mentioned in said act." The further claim is "that had there been any intention on the part of the legislature to use the terms 'glucose' and 'corn syrup' interchangeably and as synonymous then the term 'corn syrup' would have been enumerated as one of the simple syrups." We do not think this reasoning at all conclusive. Prior to the enactment of this

statute the law prohibited the sale of molasses, syrup or glucose unless distinctly branded or labeled with its true and appropriate name,—or any mixture thereof, unless it was branded or labeled “glucose mixture,” and the per cent in which glucose entered into its composition. C. L., Sec. 5024. The present act which repeals the provisions of the former act expressly permits the mixture to be labeled “glucose mixture,” or “corn syrup,” and forbids mixtures or syrups to have any other designation than required in the act so far as such designation “represents or is the name of any article which contains saccharine substance.” It is a fair presumption that the legislature, in enacting this law, recognized the obnoxious character of the term “glucose” among the people, and permitted, and intended to permit, a mixture of corn syrup and cane syrup to be sold under the name of Corn Sprup. The title to the act provides for the sale of corn syrup, and in its body provides that when cane syrup is mixed with it, the manufacturers and dealers shall state the proportionate ingredients. The smaller amount of cane syrup used does not change the character of the general product, any more than salt changes the character of bread, or, sugar that of cake, and the act permits the sale of the mixture as corn syrup. Syrup, as defined by the United States Department of Agriculture, “is the product obtained by purifying and evaporating the juice of a sugar producing plant without removing any of the sugar.” Syrup thus obtained from cane is cane syrup; syrup so obtained from sorghum is sorghum syrup, and syrup so obtained from corn is corn syrup. There is no reason why corn syrup should be labeled glucose, and until the legislature have so ordered in language susceptible of no other construction, the law must be held not to bear that construction.

Conviction reversed, and respondent discharged.

Hooker, C. J., took no part in the decision. The other justices concurred.

PEOPLE v. HINSHAW.

(Opinion filed January 5, 1904.)

Pure Food Law—Adulterated with Harmless Ingredients—Act 193, P. A. 1895, construed.

The coloration of “Extract of Vanilla” with any substance to give it the appearance of greater strength is a violation of the pure food law, even though such coloring matter is harmless.

Act 193, P. A. 1895, as amended by Act 118, P. A. 1897, held constitutional.

Error to the circuit court for Saginaw county; B. A. Snow, judge.

Appeal of Emory H. Hinshaw from a conviction under the pure food law. Affirmed.

Charles A. Blair, Attorney General, and Frank A. Rockwith, Jr., and C. M. Browne, for the people.

Eugene Wilber for respondent and appellant.

Respondent was prosecuted and convicted of the unlawful sale of "Extract of Vanilla, which was then and there adulterated within the meaning of act number 193 of the Public Acts of the State of Michigan of the year 1895, as amended by act number 118 of the Public acts of 1897, in this, to wit: That said extract of Vanilla was colored by the addition of a foreign coloring matter, to wit: coal tar dye, whereby its inferiority was concealed, and whereby said Extract of Vanilla was made to appear better and of greater value than it really was."

Two errors are assigned.—(1) that the court erred in instructing the jury; (2) that the act is unconstitutional as repugnant to the Fourteenth Amendment of the Constitution of the United States.

Grant, J.: I. The instruction complained of is as follows: "Now before the inferiority of an article can be concealed it must be necessarily first ascertained as to whether or not there is an inferiority in the article. If it is an inferior article and that inferiority is concealed by reason of the addition of foreign substance in this vanilla, and you are satisfied from the proof beyond a reasonable doubt of the fact, then he would be guilty, although he had no knowledge as to the foreign substance being in the bottle."

It appears that no such claim was made on behalf of respondent upon the trial; no request was asked covering the points now raised. The only objections shown by the record to have been made are.—first, that the title is not broad enough to cover the provisions in the amendment of 1897; second, that the legislature has no power to prohibit and punish acts in themselves harmless; third, that the act is unconstitutional.

Even in criminal cases it is the duty of counsel to call the attention of the court to the points on which an instruction is desired. *People v. Ezzo*, 104 Mich. 311.

We, however, are of the opinion that the information charges

the coloration to make an inferior article appear better and more valuable than it really was, and is sufficient; and also that there was evidence to sustain the allegation. The State Chemist testified that the effect of the coal tar dye was to make the article appear of greater value than it really is, and that the people would think it stronger than it really was. It is true, his testimony was weakened by cross-examination, but not sufficient to take the question from the jury,—especially in view of the fact that no other purpose than to make the article appear better, is shown.

II. The use of coal tar dye being harmless, counsel for respondent insists that the case comes within the rule of the recent case of *People v. Jennings*, 94 N. W. R. 216; 10 D. L. N. 39. That case had not been decided when this case was tried. No such theory was advanced upon the trial. Even if it were, we, however, think the case is clearly distinguishable from *People v. Jennings*. The color given to lemon extract, which of itself is almost colorless, is no indication whatever of the strength of the extract or its value. Its color is a mere whim or caprice of the trade, and no more indicates the character and value of the extract than does the coloring matter, used to color butter, indicate its character and value. In this case Vanilla resembles the color of the bean from which it is produced. Its strength and value are judged to some extent at least, under the evidence in this case, from its color. No other object is apparent from the use of the coloring than to make it appear of a quality better than it really is.

III. It is urged that the act is unconstitutional on account of the proviso "that nothing in this act shall prevent the coloring of pure butter." This act is similar in its provisions to that involved in *People v. Rotter*, 91 N. W. R. 167; and *People v. Phillips*, Id. 616. The constitutionality of such acts was there sustained, and a discussion is unnecessary. *Capital City Dairy Co. v. Ohio*, 183, U. S. 238, 246, is decisive of the question.

The conviction is affirmed.

The other justices concurred.

The Pratt Food Company,

v.

Arthur C. Bird, Dairy and Food

Commissioner of the State of Michigan.

Montgomery, J.: The bill in this case is filed to restrain the defendant, his clerks and employes, from writing, printing, issuing, publishing or sending out any bulletin, writing, publication or notice, to the effect that complainant's preparations

sold as Pratt's Food for Horses and Cattle, Pratt's Poultry Food, and Pratt's Animal Regulator, or either of them, are not licensed under Act No. 12 of the Laws of 1905, and warning the public against buying or selling these preparations.

The bill sets out that the defendant asserts and claims that these preparations come within the terms of the act, and that unless restrained by injunction he will so assert by bulletins issued to the trade, and by this method intimidate dealers and prevent their purchasing complainant's products. (We are stating simply the substance of the averments in brief.) It is also asserted that the effect of such bulletins will be to destroy and ruin the complainant's trade and work irreparable injury.

Upon the hearing below the bill was dismissed, and the complainant appeals. Three questions are presented upon the record, first, whether in view of the case complainant is entitled to the remedy here invoked; second, whether Act No. 12 of the Public Acts of 1905 is constitutional; third, whether if it be constitutional the complainant's products come within the terms of the statute.

1. The statute in question is an amendment of Act No. 211 of the Public Acts of 1893, entitled "An act to provide for the appointment of a Dairy and Food Commissioner, and to define his powers and duties and fix his compensation," and by section 18 of the act it is provided that "Any manufacturer, company, person or persons who shall sell, offer or expose for sale or for distribution, in this State, any concentrated commercial feeding stuff used for feeding live stock, shall furnish with each car, or other amounts shipped in bulk, and shall affix to every package of such feeding stuff, in a conspicuous place, on the outside thereof, a plainly printed statement, clearly and truly certifying the number of net pounds in the car or package sold or offered for sale, the name or trademark under which the article is sold, the name of the manufacturer or shipper, the place of manufacture, the place of business, and a chemical analysis, stating the percentages it contains of crude protein, crude fibre, nitrogen—free extract and ether extract, all constituents to be determined by the methods adopted by the association of official agricultural chemists. Whenever any feeding stuff is sold at retail in bulk or in packages belonging to the purchaser, the agent or dealer shall furnish to him a certified copy of the chemical analysis named in this section. The term concentrated commercial feeding stuffs as used in this act shall include linseed meal, cotton seed meal, pea meals, cocoanut meals, gluten meals, oil meals, of all kinds, gluten feeds, maize feeds, starch feeds, mixed sugar feeds, hominy feeds, rice meals, oat feeds, corn and oat feeds, meat meals, dried blood, clover meals, mixed

feeds of all kinds, slaughter house waste products; also all condimental stock foods, patented and proprietary stock foods, claimed to possess nutritive properties and all other materials intended for feeding to domestic animals. * * *” A penalty is provided for the violation of this provision.

It is strenuously insisted by the Attorney General that if it be conceded that the complainant's products do not come within the inhibition of this statute, yet no remedy by injunction exists, for the reason that the effect of issuing an injunction is to restrain the prosecution of a criminal proceeding. Numerous cases are cited, among them *Arbuckle v. Blackburn*, 113 Fed. Rep. 625; *State v. Wood*, 155 Mo. 425, and *Predigested Food Co. v. McNeal*, 1 Oh. N. P. 266.

In so far as these cases lay down the rule that a court of equity will not interfere to restrain a public officer from invoking the criminal law and instituting a prosecution for a violation of a statute they have our full approval. A court of equity will not transfer to its own jurisdiction the trial of a criminal case, and this though the prosecution may fall with some hardship upon the accused party. Nor, as a general proposition, will a court interfere to restrain the publication of a libel.

But we hold in *Beck v. Railway Teamsters' Protective Union*, 118 Mich. 497, that injunction will lie to restrain a combination of persons from acts which tend to ruin complainant's business by bringing to bear upon his customers intimidating and coercive means. The principle which should rule the present case is identical. If the acts which are threatened are unlawful it cannot be doubted that placing in the hands of every dealer in the State a bulletin which in effect threatens them with prosecution in case they make use of these products in the form in which they are lawfully sold to them would be to absolutely exclude complainant's business from the State. The case presented is very similar in this aspect to that of *American School of Magnetic Healing v. McAnnulty*, 187, U. S. 94, which case involved the right of the Postmaster General to exclude the complainants from the use of the United States mails. An order had been made excluding complainants from the use of the mails. The court interfered and held that such order was a violation of the property rights of the persons affected and granted relief.

2. Is the law constitutional?

It is claimed that the law is unconstitutional in that it violates Section 20 of Article IV of the constitution, which provides that no law shall embrace more than one object, which shall be expressed in its title.

It is established by our decisions that if what is introduced by way of an amendment to an act might have been incorpo-

rated in the act under the original title there is no violation of this section. *People v. Gadway*, 61 Mich. 285; *Attorney General v. Bolger*, 128 Mich. 355.

The question is therefore whether under the original title a provision fixing a standard of pure food and providing means to prevent deception in the sale of such food is within the title of an act to provide for the appointment of a Dairy and Food Commissioner and to define his powers and duties and fix his compensation. We think the title is within our previous decisions sufficient. It is obvious to one reading this title that there must have been imposed upon the commissioner certain powers and duties to make his Department of any value to the State, and furthermore that these powers and duties must have relation to something. It is equally obvious that the relation of these powers and duties must be to the subject which is brought within the Department that is created, viz., the Dairy and Food Department.

The title is very similar to that which established the Insurance Bureau. In *Connecticut Mutual Life Ins. Co. v. State Treasurer*, 31 Mich. 6, it was held that a title which read "An act to establish an Insurance Bureau" was sufficiently broad to cover any pertinent regulations respecting the bureau's course of action towards those engaged in insurance, and any appropriate provisions for prescribing the duty due from the insurance companies to the State in the matter of taxation, without violating the constitutional provisions.

3. The question of more difficulty is the question of fact as to whether the preparations of complainant are concentrated commercial-feeding stuffs as defined by the act cited above.

It is true the testimony shows that upon each of the labels which accompanied Pratt's Food for Horses and Cattle was the statement: "Pratt's Food is a regulator, to be used according to directions, and is not sold as a feeding stuff, nor is it to be fed in place of grain or any other feed." But in addition to claiming medicinal properties for the food it was also stated how it should be used to fatten and improve stock. It was stated that "It fattens both cattle and hogs quickly, makes them grow larger and healthier and make their meat tender, more juicy and better eating." It also stated that for horses it "produces bone, muscle and better staying powers; improves the wind."

When this statute was enacted commercial feeding stuffs were on the market and this fact must have been known to the Legislature.

In employing the broad language "All condimental stock foods, patented and proprietary stock foods, claimed to possess nutritive properties and all other materials intended to cover all preparations for which the claim of nutritive qualities was

made." Complainant's preparations come within this language. Similar representations were made in the labels of other preparations.

We are of the opinion that the Circuit Judge was right in holding that all these preparations were within the statute.

The decree is affirmed with costs.

Pierre Viaus Maple Company, Complainant, v. Arthur C. Bird, Dairy and Food Commissioner, and Joseph Schnitzer, Inspector of the Dairy and Food Department, Defendants. Before Grant, C. J., Blair, Montgomery, Ostrander and Hooker, JJ.

Complainant is the manufacturer of a brand of syrup known as the "Pierre Viaus Pure Canadian Maple Syrup and Cane Syrup." The trade-mark being the letters P. V. The bill alleges that the Canadian Pure Maple Syrup exceeds the amount of Cane Syrup. It sets forth efforts made with the Pure Food Commission to agree upon a label which shall comply with the law, the failure of these negotiations, the representations made to the trade by the defendants that the sale of this syrup is illegal, and the injurious effect upon the complainant's business, and prays that the defendants be restrained from in any manner interfering with its business. To this bill of complaint the defendants demurred upon the ground that the syrups mentioned in said bill of complaint are not labeled as required by the laws of this State. The demurrer was overruled and the defendants have appealed.

Grant, C. J.

It is urged by the Attorney General that the sale of this mixture is in violation of section 5007 of the Compiled Laws, reading as follows:

"That it shall be unlawful for any person, dealer, firm, manufacturer or corporation to manufacture and sell, or offer for sale, any maple sugar, maple molasses or maple syrup that is in anywise adulterated with common sugar, beet sugar, glucose or any other foreign substance without distinctly marking, stamping or labeling the articles or the package containing the same with the true and appropriate name of such article and the percentage in which common sugar, beet sugar, glucose or any other foreign substance enters into the composition of the same."

It is urged by the complainant that the case falls within Act 193, Public Acts of 1895, known as the Pure Food Law, and entitled "An act to prohibit and prevent adulteration, fraud and deception in the manufacture and sale of articles of food and drink."

Sec. 1 (C. L. 5010) of the act prohibits the sale or having in possession with intent to sell any article of food which is adulterated within the meaning of the act.

Sec. 2 (C. L. 5011) defines the term "food" to include all articles used for food or drink.

Sec. 3 (C. L. 5012) states what articles shall be deemed to be adulterated. The section closes with the following proviso:

"Provided further, That the provisions of this act shall not apply to mixtures or compounds recognized as ordinary articles or ingredients of articles of food, if each and every package sold or offered for sale bear the name and address of the manufacturer and be distinctly labeled under its own distinctive name, and in a manner so as to plainly and correctly show that it is a mixture or compound, and is not in violation with definitions fourth and seventh of this section."

The court held that this syrup came within the Pure Food Law (Act 193), and not under the act prohibiting the adulteration of maple sugar, etc., and that it came within the proviso above quoted.

We think the court was in error. The act in regard to the manufacture and sale of maple sugar is complete in itself, and covers the entire subject. It was intended to prohibit the manufacture and sale of maple sugar under any name without labeling the product with the true and appropriate name, stating thereon the percentage of any other ingredient used in its manufacture. The title of the act is "An act to prohibit the adulteration of maple sugar, maple molasses and maple syrup." The word "adulteration" in this statute means the mixture of any foreign substance, wholesome or unwholesome, with maple sugar. The evident purpose of the statute is to compel all persons manufacturing or selling maple sugar to inform the public not only of what the product is composed, but the proportions of each article used in the manufacture.

Decree reversed, and bill dismissed with costs of both courts.

Armour & Co., Complainants,

v.

Arthur C. Bird, State Dairy and Food Commissioner,
et al., Defendants.

Before: Blair, C. J., Grant, Montgomery, Ostrander, Hooker, J. J.:

Complainant is a corporation organized under the laws of the State of New Jersey, with headquarters in Chicago, Illinois. It is and has been, for many years, engaged in the manufacture and sale of fresh and cured meats and sausage and other meat

products. Its sale of these products, including sausage, extended over the entire State of Michigan.

In the year of 1906, the defendant, the Dairy and Food Commissioner, caused chemical examination to be made of the various brands of sausage sold within the State, including that of the complainant, and found that many of them contained cereals and a percentage of water greater than that found in meat alone. On January 16, 1907, he issued the following circular:

"Gentlemen:—A growing tendency on the part of manufacturers of sausage, bolognas and similar meat products, to use various preparations and substances foreign to the legitimate ingredients necessary to the manufacture of these articles of food, the said preparations being commonly known and designated as fillers, binder, etc., has prompted this Department to make a thorough investigation into such sausages. This has been done for the purpose of ascertaining the true reasons for the widespread practice of using the preparations mentioned.

The results obtained from the investigation as carried on in the Department laboratory lead to but one conclusion, viz., that the addition of so-called binders and fillers to meat products is primarily for the purpose of substituting in part an inferior or cheaper substance for legitimate ingredient, thereby lessening the cost of manufacture.

The first and second subdivisions of section 5012 of the Compiled Laws provide that an article shall be deemed to be adulterated within the meaning of the act,—first, if any substance or substances have been mixed with it so as to lower or depreciate or injuriously affect its quality, strength or purity; second, if any inferior or cheaper substance or substances have been substituted wholly or in part for it. Basing its ruling on the subdivisions of section 5012 above cited, this Department holds that the addition of the so-called binders and fillers mentioned to meat products is contrary to law. From and after this day, manufacturers and dealers will be held to a strict account for each and every violation. Provided, however, that dealers within the State are given until January 25, 1907, to dispose of stocks on hand.

"Yours very truly,

"A. C. BIRD,

"State Dairy and Food Commissioner."

This circular was sent to all the meat dealers of the State, and a copy sent to the complainant at Chicago. Those employed under the direction of the defendant Food Commissioner also verbally informed the retail dealers of the State that they would be prosecuted if they did not comply with the above order.

The trade of the complainant in Michigan was very large, and the effect of this circular, and the threats of prosecution verbally made, naturally tended to decrease very largely the complainant's sales in this State, and to cause it considerable loss. Therefore, on November 18, 1907, complainant filed its bill of complaint in this cause, setting forth the above circular and threats on the part of the defendants, the injury to its business, that defendants were acting illegally in their conduct, and praying that they be restrained from "declaring in any manner, orally or in writing, to the customers and patrons of your orator, or to the people of the State of Michigan, that the sausages and other meat products of your orator containing cereal, manufactured and sold, and offered for sale in the State of Michigan, are sold and offered for sale in violation of any statute of the State of Michigan." The bill alleges that the sausage manufactured and sold by the complainant bear labels showing their respective ingredients, in accordance with the standard fixed by the laws of the United States and the regulations of the Department of Agriculture thereunder, a sample of said labels being set forth in the bill and reading as follows:

ARMOUR'S "DEVONSHIRE" Farm Style SAUSAGE MEAT. Made from the Meat of Hams and Selected Young Pork. Prepared with choicest spices and cereals. Armour & Company.

U. S. Inspected and passed under the Act of Congress of June 30, 1906. Establishment 2 A.

An answer was duly filed denying that the sausage manufactured and sold by the complainant in this State containing cereals and water is a wholesome product, or that it is manufactured in accordance with the Act of Congress of June 30, 1906, and the regulations of the United States Department of Agriculture; or that it is a compound or mixture within the meaning of the proviso of Sec. 3, Act 193, Pub. Acts of 1895, as amended. The answer admits that the sausage of the complainant is shipped into this State in packages, or boxes, labeled with the trade name of the sausage, and the words "with cereal," but alleges that the consumer, or purchaser of the retail dealer, is in no way advised, when he purchases, that the sausage contains cereal, or cereal and added water, unless such purchaser purchased the entire package shipped to the dealer, and that even then he was not informed that the product contains added water.

Both the bill and answer contain other allegations which we deem it unnecessary to state. Issue was joined, proofs taken in open court and by deposition, and after a full hearing decree was entered dismissing the bill. The statute, C. L. Sec. 5012,

under which defendants claim to justify their action, is as follows:

"An article shall be deemed to be adulterated within the meaning of this act: First, if any substance or substances have been mixed with it, so as to lower or depreciate or injuriously affect its quality, strength or purity; second, if any inferior or cheaper substance or substances have been substituted wholly or in part for it; third, if any valuable or necessary constituent or ingredient has been wholly or in part abstracted from it; fourth, if it is an imitation of, or is sold under the name of another article; fifth, if it consists wholly or in part of a diseased, decomposed, putrid, infected, tainted or rotten animal or vegetable substance or article, whether manufactured or not, or in the case of milk, if it is the product of a diseased animal; sixth, if it is colored, coated, polished, or powdered whereby damage or inferiority is concealed or if by any means it is made to appear better or of greater value than it really is; seventh, if it contains any added substance or ingredient which is poisonous or injurious to the health: Provided, that nothing in this act shall prevent the coloring of pure butter: And provided further, that the provisions of this act shall not apply to mixtures or compounds recognized as ordinary articles or ingredients of articles of food, if each and every package sold or offered for sale bear the name and address of the manufacturer and be distinctly labeled under its own distinctive name, and in a manner so as to plainly and correctly show that it is a mixture or compound, and is not in violation with definitions fourth and seventh of this section."

Grant, J.: The following facts are admitted or established beyond controversy:

(a) The sausage manufactured by the complainant is a wholesome article of food. It contains nothing deleterious to health.

(b) It is a mixture or compound within the meaning of the proviso in the statute above quoted, being composed of meat, cereal, salt and spices.

(c) It is made in accordance with the Act of Congress and directions prescribed thereunder by the Commissioner of Agriculture, and under the inspection of the United States inspectors.

(d) Sausage is made of different kinds of meat, viz., pork, beef and veal. Whether manufactured for interstate commerce or domestic use within the State, it is sometimes made with cereal, and sometimes without it. Cereal is not a necessary ingredient to its manufacture, although it has been used by most manufacturers for many years.

(e) Water is an essential ingredient in the manufacture of

sausage, whether made with or without cereal. This is shown by the evidence of the defendants. One of their witnesses, with an experience of thirty-five years, testified:

"In the manufacture of pork sausage we use pork, and if the pork is a little too fat we put in some veal or beef. It is necessary to have a little water added, a quart and a half to 100 pounds. It is pretty hard to make them without. We use a little more water than would be found in the meat when freshly killed."

Another, who had been engaged in the manufacture of sausage since 1864, testified:

"I put a little water in pork sausage. I use from five to ten pounds of water to 100 pounds of meat. Enough to make it pliable that is all. I use from eight to ten pounds of water in making beef sausage. I presume you could make sausage without water, but you could not stuff it very well."

Another who learned to make sausage in Germany, testified:

"I have always used water and still use water in the manufacture of sausage. Water is necessary. They use water in making sausage in Germany. So far as I know everyone used it."

The United States regulations require that the water used shall be pure.

(f) It is not in violation of definitions four and seven of the act. It does not violate definition seven because it contains no substance or ingredient poisonous or injurious to health. It does not violate definition four because meat is the basis and principal ingredient of the article. As manufactured by complainant, it contains from two to ten per cent of cereal. It is and has been, for more than forty years, recognized in the trade as sausage. When sold as sausage with cereal added it deceives no one, is not an imitation and manufacturers are entitled to manufacture and label it as sausage with cereal. It is not contended that manufacturers have not the right to use the name "sausage" when sold with a proper label.

The Federal statute is practically identical with that of Michigan, and contains a proviso reading:

"That an article of food which does not contain any added poisonous or deleterious ingredients shall not be deemed to be adulterated or misbranded in the following cases:

First. In the case of mixtures or compounds which may be now or from time to time hereafter known as articles of food under their own distinctive names, and not an imitation of or offered for sale under the distinctive name of another article, if the name be accompanied on the same label or brand with

a statement of the place where said article has been manufactured or produced.

Acting under this law, the Department of Agriculture, on September 12, 1906, adopted the following regulation:

"Sausages and Chopped Meats. The word sausage without a prefix indicating the species of animal is considered to be a mixture of minced or chopped meats with or without spices. If any species of animal is indicated as pork sausage, the sausage must be wholly made from the meat of that species. If any flour or other cereal is used the label must so state. If any other meat product is added, the label must so state."

To this regulation the department added "manufacturers are warned that the above rulings do not exempt them from the enforcement of state laws."

The learned circuit judge, in his opinion, found that sausage manufactured as is that of the complainant, "is probably as healthy as pure sausage such as was known to the fathers."

Briefly stated then, the case is this: complainant, a resident of another state, is manufacturing and shipping into this State a wholesome article of interstate commerce in strict accord with the law and regulations of the federal government. State law cannot interfere with this interstate traffic. The law here involved does not attempt to interfere with it, or to deny to the complainant the right to sell and ship its goods to retail dealers in this State. There are, therefore, but two questions material to the determination of this controversy, viz.:

(1) May the state through its legislature enact laws regulating the domestic sales of this product to consumers within the state?

(2) Does the statute above cited include the product made by the complainant?

It is not contended that the state is not clothed with the power to regulate the domestic sale of such products after their shipment into the state. Intoxicating liquor, which is a subject of interstate commerce, may be shipped into this state in original packages, but it cannot be sold within the state in violation of the state laws regulating or prohibiting its sale. No contention is made that the state statute in question is not constitutional and reasonable. Pure food laws have been enacted probably in all the states and have been universally held valid when reasonable. The sole question therefore left to determine is whether the statute includes sales to consumers in small quantities taken from the original packages. If the domestic dealer were to sell an original package labeled as above to the consumer, such sale, would be valid, because the label complies with the law and notifies the purchaser that the article is not a sausage of meat alone, but a sausage composed of

meat and cereal. It is not contended that manufacturers of sausage have not the right to label their product "sausage" with the statement added that it is mixed with other products, specifying them.

If we understand the position of counsel for complainant correctly, it is that in construing this statute courts should be governed, not by the popular and common understanding of the meaning of the word "sausage," but by its trade and commercial meaning; that is, its meaning as understood between the manufacturers and their customers to whom they sell for retail to consumers. They say:

"It is unmistakable that the legislature understood it was enacting a law with reference to an article of food which was then a subject of trade and commerce among the people. There were at times scores of different kinds of "sausage" upon the market, that is, sausage made in different ways, a difference in the ingredients used in the various kinds, and a variance in the proportions used; and different manufacturers and dealers made and dealt in different kinds, and each knew that all this variety of meat food products were included in the term "sausage," and the legislature is charged with knowledge of that fact, and must be presumed to have used the term "food" accordingly."

In support of this they cite several cases from the federal courts construing the tariff or duty acts, in which it has been held that the laws of Congress imposing duties upon imported goods must be construed with reference to the trade or commercial meaning of the articles mentioned in the law. Among the cases cited are the

Two Hundred Chests of Tea, 9 Wheaton 430;
Cadwalader v. Zeh, 151 U. S. 171;
McCoy v. Hedden, 38 Fed. Rep. 89.

In the Two Hundred Chests of Teas it was held that "bohea tea" was used in the duty act in its known commercial sense, viz., "that article which in the known usage of the trade acquired that distinctive appellation."

In Cadwalader v. Zeh, the question was whether, under the duty act, earthenware consisting of small cups, saucers, mugs, etc., having on them pictures of animals and other objects, and letters of the alphabet, should have been assessed as toys with 35 per cent ad valorem, or as china, etc., with 60 per cent ad valorem. The case was held to depend upon the commercial meaning of the word "toys."

In McCoy v. Hedden, the question was whether currycombs were dutiable under a provision imposing a duty upon combs of all kinds. If they were not known to the trade among mer-

chants as combs they were held not dutiable as such. These and other similar cases arose between the United States and importers of foreign goods, and do not apply to cases arising under the pure food laws of state governments. Courts will take cognizance of the well-known fact that farmers, laboring men and consumers are not generally familiar with the customs of trade and commerce in importing goods, or of understandings of the trade between manufacturers and merchants who buy those products for retail trade. Such construction would emasculate the pure food laws and deprive the people of the protection which the legislature wisely intended to give them.

Sausage is defined by all the lexicographers as an article of food composed of meat, salt and spices. (See Worcester's and Century dictionaries). The people generally so understand it. The writer of this opinion would be compelled to admit that until very recently he had no knowledge that cereal was used in the manufacture of sausage. It is too manifest for further argument that the legislature in enacting the law was not providing for the regulation of sales between manufacturers and merchants, but between retail dealers and consumers. They enacted the law solely for the protection of consumers, the people who buy and eat the products. The consumer who prefers sausage made of meat alone is entitled to be informed that he is buying such an article. The consumer who prefers sausage mixed with cereal is entitled to know that he is purchasing that article. The contention of the complainant, if sustained, would deprive the consumer of this right which the statute plainly gives him. We cannot follow *State v. Nesland*, 120 N. W. Rep. 107, (Iowa), wherein it is held that sales in small quantities from original packages are not within the statute. In that case a pound of lard was sold from a fifty pound package properly labeled with its constituent parts, but it was held that the retail dealer was not required to label the small packages sold. That opinion is based upon the well-known rule that penal statutes must be strictly construed. The statute of Michigan expressly provides that these mixtures must be labeled showing the different kinds of ingredients contained in them. Sec. 2 is as follows:

"The term food, as used herein, shall include all articles used for food or drink, or intended to be eaten or drank by man, whether simple, mixed or compound."

This is a general statute covering all food products not otherwise specifically provided for. We consider its provisions perfectly plain, and not subject to any misunderstanding or uncertainty. To hold otherwise would substantially exclude all the benefits and protection to the people of the state which

the statute was clearly designed to grant. We, therefore, hold that retail packages of small amounts taken from the original package of the manufacturer, and sold to the consumer, must be properly labeled as the law directs.

The court below dismissed the complainant's bill, thereby granting it no relief whatever. In view of the position taken by the Food Commissioner in his circulars and answer herein filed; and in view of the importance to the complainant, and to the people of the state to know under what conditions a wholesome article of interstate commerce may be sold in this state, we think the learned circuit judge should have entered a decree defining the rights and determining under what conditions complainant, as well as other manufacturers, may have their valuable and wholesome products sold by the retail dealers, and to restrain the defendants from interfering with such legitimate sales.

The Food Commissioner, as above stated, denied in his answer that the sausage made by the complainant was a wholesome product, or that it was a mixture or compound within the meaning of the act, and insisted that it was an adulteration. His attitude is further shown by his reply to complainant's letter of January 17, 1907, asking "if there would be any objection to using cereal if such fact is stated on label same as provided by national law." He denied this permission, which was, not only a compliance with the federal law, but a compliance with the state law.

The use of cereal in the manufacture of sausage has been very general. The State Food and Dairy Commissioner of Iowa, who at the time of the hearing below had held office for five years, testified to its general use in that state, stating that "the ingredients used by the Iowa manufacturers in making sausage are chopped meats, salt, spices, flour and sufficient water." In July, 1907, he issued a bulletin stating:

"The Commissioner has no authority to establish standards for the information of the public, it is here stated that this Department will not interfere with the sale of sausage because of the presence of wholesome flour, provided that an analysis does not show more than five per cent of such flour."

It appears to be established by the evidence that sausage made with cereal is sold cheaper than that made of meats alone. If so, the people desiring to buy and eat the cheaper products should have the privilege of doing so, and such product should not by any decision of the court be prohibited from sale.

The opinion of the circuit judge does not prohibit its sale when properly labeled. He held that the trouble was not with the use of cereal, but in permitting the product to be sold at the retail counter without informing the customer that cereal is a part of it. Counsel for respondents conceded in the oral

argument in this court that it was a wholesome food and was entitled to sale in this state, when sold under a proper label informing customers of what it is composed.

It is conceded that the use of cereal requires more water than does sausage made with meat alone. Anyone of intelligence would, upon reflection, know this to be the fact. The only doubt I entertain in the case is whether the label should, in addition to the words "with cereal," contain also "and water." In view of the fact that water is generally used in the manufacture of all sausage, and that no law or regulation of the food department has fixed the amount of water that may be used, it would seem like judicial legislation for the court to require the label to show that water is used in the manufacture.

The statute does not require the label to state the proportion of the ingredients composing the mixture, but only the names of the ingredients. The statute makes special provision for butter, cheese, lard, canned fruits and vegetables, coffee and molasses. There are other statutes governing the manufacture and sale of specific products requiring the proportions of the ingredients to be placed upon the labels, such as Act 123, Public Acts 1903; *People v. Harris*, 135 Mich. 136.

It is within the power of the legislature to pass an act specifically provided for the manufacture and sale of sausage, and that the labels should state the proportions of the ingredients used. We hold a label "sausage with cereal" upon packages sold to consumers is a compliance with the statute in labeling the mixture, and a decree should be entered so stating. A decree will be entered in this court in accordance with the above opinion. No costs will be allowed.

PEOPLE v. JACOB.

(Opinion filed January 4, 1915.)

State Officers—Dairy and Food Commissioner—Inspection of Prisons by Statutes—Act 12, P. A. 1905.

In the prosecution of the Superintendent of the Detroit House of Correction for his refusal to permit inspectors of the State Dairy and Food Department to inspect the prison;

HELD, (by an equally divided Court): Though the State Dairy and Food Commissioner is limited in his investigations to inspections of the store, etc., of the manufacturer or vendor of food or drink products which are made, stored, sold or offered for sale, as the Detroit House of Correction is paid by the different counties of the state for the board of prisoners sent to

that institution under contract, it comes within the class that sells food, etc., and is amendable to the provisions of Act No. 12, P. A. 1905.

The inspection of state penal institutions is within the purview of the statute relating to the general Pure Food Law.

While the law provided for the inspection of penal institutions by the Board of Corrections and Charities (Sec. 2252, C. L. 1897) and in the case of the Detroit House of Correction, by the Board of Inspectors appointed by the Common Council of the City, the act creating the Detroit House of Correction (Sec. 2156, C. L. 1897) permits inspections by any state authority, of which the State Dairy and Food Department is one.

In an opinion by Justice Stone (Ostrander, Kuhn, Moore, JJ., concurring) the opposite view is taken.

Exceptions to recorder's court of Detroit. William F. Connolly, Judge.

Appeal of Bernhardt Jacob from a conviction for refusing to permit inspectors from the State Dairy and Food Department to inspect the Detroit House of Correction. Affirmed.

Grant Fellows, Attorney General; James W. Helme, Dairy and Food Commissioner, both of Lansing, for the People.

William E. Tarsney, assistant corporation counsel, (Richard I. Lawson, corporation counsel, of counsel), both of Detroit, for defendant.

Before the Full Bench.

Stone, J.: This case is before us upon exceptions before sentence. The appellant is the superintendent of the Detroit House of Correction, a state penal institution, located in the city of Detroit. On October 21, 1913, Burr B. Lincoln, a state dairy and food inspector, sought to make an investigation of the food conditions in the said institution, and for that purpose he called upon the appellant and requested that he be permitted to go through the building and see the foods that were there served. This request was refused by the appellant, who informed the inspector that he had no right there; that it was an institution over which the dairy and food inspectors had no jurisdiction, and that he could not go through the institution. Because of this refusal complaint was made charging appellant with a violation of Act No. 167 of the Public Acts of

1899, being "An act in relation to the powers and duties of the Dairy and Food Commissioner of the state of Michigan." This act provides that any person who shall obstruct the said commissioner, or his deputy, or any of his duly appointed inspectors, by refusing to allow him entrance to any place where he is authorized to enter in the discharge of his official duty, shall be guilty of a misdemeanor, and prescribes the punishment.

A hearing was had upon this complaint in the recorder's court, and the respondent and appellant was by the verdict of a jury, found guilty as charged.

The questions raised by the assignments of error, may be combined into the one question, namely: Has the Dairy and Food Commission, or its inspectors power, under the law, to investigate the food conditions of the Detroit House of Correction?

On the part of the people it is contended that ample power is vested in the inspectors of the Dairy and Food Commission to make such investigation, and that in view of the refusal of the superintendent to permit the making of the investigation, he had violated the act above referred to. Attention is called by the People to Chapter 76, Compiled Laws of 1897, under the provisions of which said institution was erected, and is controlled, and especially to Section 2156, which provides that:

"The management and direction of the said house of correction, subject to periodical inspection by the state authorities, in their discretion, shall be under the control and authority of a Board of Inspectors, to be appointed for that purpose by the Common Council of the City of Detroit upon the nomination of the mayor."

It is urged by the prosecution that under this section alone the state has a right to inspect the institution, and that the right of inspection by any state authority, is here given; that authority to inspect this institution is made still plainer by the Pure Food Laws of the state; that Sec. 6 of the Act creating the office of Dairy and Food Commissioner and defining his powers and duties (C. L. 4978, as amended by Act 12, Pub.

Acts of 1905), states that such commissioner or his deputy, or any person appointed by him for that purpose.

"shall have power, in the performance of their duties, to enter into any creamery, factory, store, salesroom, drug store, or laboratory, or place where they have reason to believe food or drink are made, stored, sold or offered for sale and open any cask, tub, jar, bottle or package containing or supposed to contain, any article of food or drink, and examine or cause to be examined the contents thereof, and take therefrom samples for analysis."

Attention is also called to Sec. 4 of the Amendatory Act of 1905, which provides that the inspectors shall have the same right to access to the places to be inspected as the said commissioner or his deputy.

A reading of the entire of Sec. 6, above referred to, shows that the Dairy and Food Commissioner, his deputy or inspectors, shall regulate filthy and unsanitary conditions which may exist in the operation of any bakery or other places where "any food or drink products are manufactured, stored, deposited or sold for any purpose whatever."

It was admitted upon the trial of the case that a bakery was maintained in the institution to bake bread for the prisoners, at the time complained of.

Sec. 5029, Compiled Laws of 1897 makes it the duty of the Dairy and Food Commissioner of the state to investigate all complaints for violations of the act known as the General Pure Food Law, and especially it is made the duty of the food inspectors in the cities to examine all complaints made to them of violations of the act.

On the part of the defendant and appellant it is contended that the act creating the State Dairy and Food Commission, and the amendments thereto, together with Act No. 167 of the Public Acts of 1899, did not confer the right upon the State Dairy and Food Commission or its inspectors to inspect the food conditions of a public or state institution such as the Detroit House of Correction.

It is urged by defendant's counsel that, by the terms of the act creating it, the institution is used for the confinement, punishment and reformation of criminals, or persons sentenced

thereto, under the laws authorizing the confinement of convicted persons in the House of Correction; that the management and direction of the said House of Correction subject to periodical inspection by the state authorities is, by statute, placed under the control and authority of a board of inspectors appointed by the common council of the city of Detroit upon the nomination of the mayor; that this board of inspectors is authorized and empowered by the common council to make rules for the regulation and discipline of the House of Correction, and to appoint a superintendent; that under the statute the superintendent has entire control and management of all its concerns subject to the authority established by law, and the rules and regulations adopted for its government.

It is contended by the appellant that the Detroit House of Correction is not any one of the places named in which the state dairy and food commissioner or his inspectors are authorized to enter; that the institution is not a creamery, factory, store, etc., or a place where the inspectors would have reason to believe food and drink are made, stored and offered for sale, within the meaning of the statute.

An examination of the statutes relevant to this subject has led us to the conclusion that the public penal institutions of this state, including the Detroit House of Correction, are not within the purview or terms of the statute relating to the General Pure Food Law. The legislature has provided a visitorial board whose duty it is to inspect these institutions and make due report thereon. As early as 1871 provision was made for a commission to be appointed, subsequently called "The Board of Corrections and Charities," of which the governor is ex officio a member. Sec. 2252, Compiled Laws reads as follows:

"The said commissioners, by one of their number, or by their secretary, shall, at least once in each year, visit and examine into the condition of each and every of the city and county poor-houses, county jails, or other places for the detention of criminals or witnesses and the said board or a majority thereof, with their secretary, shall, at least once in each year, visit and examine the reform school, state prison, Detroit house of correction, and state and county asylums for the insane, and the deaf, dumb and blind, and for the purpose of ascertaining the actual condition of the institutions by them or either of them visited,

the method of instruction, government, or management therein pursued, the official conduct of the superintendents or other officers and employes in charge thereof, or connected therewith, the condition of the buildings, grounds, or other property thereunto belonging, and the facts as to all other matters in any manner pertaining to the usefulness and proper management of the institutions, poorhouses, and jails above named. They, or either of them, and their secretary, shall have free access thereto at any and all times, and shall have authority to administer oaths and examine any person or persons in any way connected with or having knowledge of the condition, management, and discipline of such institutions, jails or poorhouses, as to any matters or inquiries not contrary to the purposes or provisions of this act."

Attention is called to the remaining portions of this statute:

An examination of the statutes relating to the government of the state prisons and reformatories, the powers and duties of boards of control and of the wardens of the institutions, will show that these officers have plenary power and control over all matters relating to the government of the institutions, including food, medicine, clothing, bedding, etc.—everything which pertains to the health and well-being of the inmates. With these ample provisions, and the added power of visitation lodged in the Board of Corrections and Charities, it does not seem to us that it was the intention of the legislature that this ground was also to be covered by the Dairy and Food Commission. In our opinion, that commission has no jurisdiction over these institutions, but its right to inspect is limited to the store, etc., of the manufacturer or vendor of food or drink products, which are made, stored, sold or offered for sale to the general public.

It will be noted that the language relied upon by the People in the Amendatory Act of 1905, defining the several places, where inspection may be made by the dairy and food commissioner, is specific in designating certain places, to-wit: Creamery, factory, store, salesroom, drug store or laboratory, followed by the general words, "or places where they have reason to believe food or drink are made, stored, sold or offered for sale." This general language must be construed as meaning places of the same kind, of the same general character or sort as those named.

Although it appears in this record that the Detroit House

of Correction bakes its own bread for its inmates, and for that purpose may be said to operate a bakery, yet it does not seem to us that such a place can be covered by any of the specific words mentioned. Certainly it is not a creamery, factory, store, salesroom, drug store or laboratory, as those words are used in the statute. The general rule should here apply that when after the enumeration a statute employs some general term to embrace other cases, the other cases must be understood to be cases of the same general character, sort, or kind, with those named. In other words, "they are known from their associates."

Brooks vs. Cook, 44 Mich., 617-619, and cases cited;
Roberts vs. City of Detroit, 102 Mich., 67;
Drake vs. Industrial Works, 174 Mich., 662.

We are, therefore, forced to the conclusion that the Detroit House of Correction—a state penal institution, with its superintendent, and its board of inspectors, subject to the visitation of the Board of Corrections and Charities—is not embraced within, and was not intended to be embraced within, the provisions of the Pure Food law, and that the inspector had no authority to enter the premises. Whenever the legislature desires to clothe the Pure Food Commission with such authority it will doubtless so express itself. We think it has not done so in the past legislation. Reaching this result, that conflict in jurisdiction of the different boards, which would lead to an unseemly contest, is avoided. The conviction must therefore be reversed, and the defendant discharged.

Ostrander, Kuhn and Moore, JJ., concurred with Stone, J.

Brooke, C. J.: Mr. Brother Stone in the earlier part of his opinion states very clearly, the contentions made on behalf of the people in this case. It is claimed that the dairy and food commissioner, or his deputy, is authorized to make the inspection, which was denied, upon two grounds:

1st. Under the act creating the Detroit House of Correction, Sec. 2 (C. L. 1897, Sec. 2156), which provides:

"The management and direction of the said house of correction, subject to periodical inspection by the state authorities in

their discretion, shall be under the control and authority of a board of inspectors, to be appointed for that purpose by the common council of the city of Detroit."

It is claimed on behalf of the people that this language used in the law of its creation is broad enough to warrant the inspection of said institution by ANY state authority. In my opinion the contention is fully warranted by the language used. It would be difficult to select words of more general import than those used in the statute:

"subject to periodical inspection by the state authorities in their discretion."

No particular state authority is pointed out, nor is the right of inspection limited to any such particular authority. There is no doubt that included among the state authorities entitled to the right of inspection is the State Board of Charities. It, however, by no means follows that the exercise of the right by that board exhausts the authority of the state under the language of the section above quoted. It seems to me clear that the labor department might very properly inspect the institution to determine whether proper safety devices were employed as provided by the general laws of the state touching that subject. The State Board of Health, too, should have authority to inspect and determine whether the laws relating to sanitary conditions were being obeyed therein. And closely akin to the necessity for such inspection is the necessity for inspection by the State Dairy and Food Department in order that it may be determined that the food served is wholesome in quality.

It should be borne in mind that the institution is one of considerable magnitude within the walls of which are confined several hundreds of prisoners, male and female. The female prisoners therein are boarded at the expense of the state and many counties of the state having individual contracts with the institution, by the terms of which a per diem amount is paid for the board and medical attendance of each prisoner.

Several industries are carried on in the institution requiring the use of machinery. In my opinion, it is an institution peculiarly requiring the supervision of every department of the

state whose activities are directed to securing to the inhabitants thereof sanitary conditions, wholesome food, and freedom from danger to life and limb through the use of improperly guarded machinery.

If there could be any doubt of the right of the people to insist that the dairy and food commissioner, or his deputies, is authorized to make the inspection which was denied in the instant case, it is disposed of by a reading of Section 6 (C. L., 1897, Sec. 4978), of the law creating that department. That section authorizes the entry of the commissioner, or his deputies, to certain named places and,

"or places where he had reason to believe food or drink is made, stored, sold or offered for sale."

In my opinion it is idle to say that the House of Correction is not such a place. Whatever may be said of other penal institutions of the state, this particular institution stores food in large quantities, which it sells. The record shows that during the year it received the very considerable sum of \$32,659.00 for the board of prisoners confined therein.

It is, in a sense, in the business of selling food. The fact that its customers happen to be the state itself and several political divisions of the state, makes no difference in the principle involved. It would, I think, scarcely be contended that a hotel, keeping, storing, and offering food for sale to its guests was not subject to the inspection provided for in the act creating the Dairy and Food Department. In any event I think such a construction of the legislation is too narrow and I quite agree with the opinion expressed by the learned judge who, in refusing to charge as requested by the respondent, said:

"I refuse to give this request to charge, gentlemen of the jury, upon the ground that it is my opinion that the spirit of the Dairy and Food Law is to procure and secure proper food and drink for all of the inhabitants of the state. That is its general purpose and scope. And that the terms of the act creating the Dairy and Food Commission, the acts amendatory thereto, are broad enough to include the Detroit House of Correction and all other penal institutions."

The judgment of the court below should be affirmed.

McAlvay, Bird and Steere, JJ., concurred with Brooks, C. J.

DECEPTIVE ADVERTISING.

ACT No. 276, PUBLIC ACTS 1913.

An act to regulate and prohibit false, deceptive, fraudulent and misleading advertising in newspapers, periodicals or other publications, or by circulars or handbills.

The People of the State of Michigan enact:

Section 1. Any person, firm, corporation or association, or the agent or manager of any such firm, corporation or association who, with intent to sell or in anywise dispose of merchandise, securities, service or anything offered by such person, firm, corporation or association, directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or an interest therein, knowingly makes, publishes, disseminates, circulates, or places before the public, or knowingly causes directly or indirectly to be made, published, disseminated, circulated or placed before the public, in this State, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, bill, circular, pamphlet, or letter, or in any other way, an advertisement of any sort regarding merchandise, securities, service or anything so offered to the public, which advertisement contains any assertion, representation or statement of fact which is untrue, deceptive or misleading, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than twenty-five dollars nor more than two hundred dollars, or by imprisonment in the county jail for a period of not more than ninety days, or by both such fine and imprisonment in the discretion of the court: Provided, That the publisher or printer of any newspaper or other periodical shall not be liable under this act for publishing deceptive advertising received from any other person: Provided further, That said printer or publisher is not aware of the deceptive character of the advertising so received.

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